DOCUMENT RESUME

ED 295 078 CG 020 818

TITLE Alcohol and Drug Prevention Curriculum Resource Guide Grades 10-12: Social Studies--United States History.
INSTITUTION North Carolina State Dept. of Public Instruction, Raleigh. Alcohol and Drug Defense Program.
PUB DATE 88
NOTE 111p.; For related documents, see CG 020 816-817.
PUB TYPE Guides - Classroom Use - Guides (For Teachers) (052)

EDRS PRICE MF01/PC05 Plus Postage.
DESCRIPTORS Alcohol Abuse; *Alcohol Education; *Curriculum Guides; Drinking; Drug Abuse; *Drug Education; High Schools; History Instruction; *Prevention; United States History

ABSTRACT

This curriculum resource guide on alcohol and drug prevention provides suggested activities for teachers of grades 10 through 12. Three integrated learning activities for United States history and healthful living are presented. The history goals are understanding that the years since 1945 have been years of great changes, and learning to organize information and draw conclusions. Healthful living goals include understanding personal values, analyzing drug and alcohol use in terms of need fulfillment and personal goals, and demonstrating constructive problem solving. Each of these activities lists goals, content summary, resources, activity, and assessment. A curriculum integration activities feedback form and blank suggested activity forms are included. Information on relevant federal and state statutes and court cases is included. A summary of North Carolina laws and punishments on driving while intoxicated or under the influence of drugs is included. An article on search and seizure in public schools is reprinted. Information bulletins on these topics are provided: (1) the shared responsibility of drug and alcohol education; (2) alcohol; (3) amphetamines; (4) cocaine; (5) confidentiality requirements for school personnel; (6) depressants; (7) drugs and you; (8) fetal alcohol syndrome; (9) hallucinogens; (10) inhalants; (11) legal information for school personnel regarding student alcohol or drug use; (12) Lysergic Acid Diethylamide; (13) marijuana; (14) nicotine/cigarettes; and (15) steroids. (ABL)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

SCOPE OF INTEREST NOTICE

The ERIC Facility has assigned this document for processing to:

In our judgment, this document is also of interest to the Clearinghouses noted to the right. Indexing should reflect their special points of view.

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

E. Brumback

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Alcohol and Drug Prevention Curriculum Resource Guide
Grades 10 - 12

This resource guide has been developed to provide suggested activities for teachers in grades ten through twelve. The activities have been written to address objectives from your curriculum area and from the Healthful Living Teachers Handbook. Information about alcohol and harmful drugs has been integrated to expand and enrich specific topics.

Several activities have been included in this guide for your use and for your evaluation. Please incorporate some of the activities in your lesson plans and then evaluate the activities on the sheets provided in this booklet. One composite evaluation should be submitted from each subject area by June 1, 1988.

Extra activity forms have been included for your suggestions. Please submit these with the evaluation form. Suggested activities will be reviewed for inclusion in a more comprehensive resource guide that will be distributed for the 1988-89 school year.

Many teachers have requested additional information about alcohol and harmful drugs. Some resource information has been included in this guide and it should provide curricular support for the activities.

Integrated Learning Activities
U.S. History/Healthful Living
Alcohol and Other Drugs

February, 1988
H-A

GOALS AND OBJECTIVES	Healthful Living/Mental Health Goal 4: The learner will be aware of her/his values. Healthful Living/Chemicals and Substance Abuse Goal 1: The learner will analyze drug and alcohol use in terms of need fulfillment. U.S. History/Knowledge Goal 17: The learner will know that the years since 1945 have been a time of great social, economic and political change.
CONTENT SUMMARY	Social, political and economic changes are closely related. The women's equal rights movement has politcal roots but can be viewed from a social and economic perspective. The advertising industry has capitalized on these aspects and has geared some of the alcohol and tobacco ads to women. Students will trace the development and analyze the advertisements.
RESOURCES	Healthful Living Teachers Handbook Social Studies Teachers Handbook Research Articles Media Presentations
ACTIVITY	Review the women's movement to gain equal rights politically, socially and economically. Research the leaders of the movement during the 1960s and 1970s and define their positions. Research the types of tobacco and alcohol advertisements since 1945 and analyze the changes in the ads during the 1960s and 1970s. Discuss the types of changes and the reasons for the different types of ads. Advertisements are designed to appeal to personal needs. Ads can be used to entice a certain population or to deter them from a specific act. Use the ads that have been written to encourage the female population to use alcohol and tobacco and change the setting, the characters or other components to address different personal needs. Young adults are a large consumer group. Discuss how ads are directed toward this age group and how many of the alcohol and tobacco ads feature young actors/actresses. Discuss the parallels in the youth movement and women's movement with the change in advertisements.
ASSESSMENT	Students will be able to discuss the role of advertising as an economic tool and how ads have capitalized on the youth and women's movements.

Integrated Learning Activities
U.S. History/Healthful Living
Alcohol and Other Drugs

February, 1988
H-B

GOALS AND OBJECTIVES	U. S. History/Knowledge Goal 17: The learner will know that the years since 1945 have been a time of great social, economic, and political change. U. S. History/Skills Goal 4: The learner will organize and analyze information and draw conclusions. Healthful Living/Chemicals and Substance Abuse/Goal 1: The learner will analyze drug and alcohol use in terms of need fulfillment.
CONTENT SUMMARY	The 1960s were a time of social upheaval. Dissenters were responsible for unorganized and varied attacks on established cultural norms and the term "Counter-culture" was coined. Social, political and economic factors affected the emergence and disappearance of the "Counter-culture".
RESOURCES	Textbooks List of drug related laws enacted since 1960 Newspaper and magazine articles from the 1960s focusing on: • peace movement • drug/alcohol problems relating to the Vietnam War • youth movement • civil rights movement • character descriptions of individuals involved in the drug culture (e.g. Timothy Leary)
ACTIVITY	Review the major social, political and economic events from 1945 to 1960. Include a discussion of the emergence of specific groups that have demanded equal rights in the workplace (ex. females, blacks, Mexican-Americans). Discuss the economic conditions during the early 1960s and the social unrest that was manifested in the Watts riots. Ask students to investigate how young adults from various backgrounds reacted to the Vietnam War and the general social, political and economic conditions of the decade. Define topics and have small groups research topics for group discussions. Present reports and discuss why some groups sought drug use as a solution to their problems. Research what has happened to some of the group leaders. As a final activity, ask students to write a one page paper either supporting or attacking this statement, "It is very unlikely that we will ever have another 'Counter-culture' in the United States."
ASSESSMENT	One page paper that clearly supports a point of view.

GOALS AND OBJECTIVES	U.S. History/Knowledge Goal 17: The learner will know that the years since 1945 have been a time of great social, economic and political change. U.S. History/Skills Goal 4: The learner will organize and analyze information and draw conclusions. Healthful Living/Mental Health Goal 4: The learner will be aware of her/his values. Healthful Living/Mental Health Goal 5: The learner will demonstrate constructive problem solving.
CONTENT SUMMARY	Responding to the need to control harmful substances at the federal, state, and local levels, legislation has been passed since the early 1900s. Passage of the laws has generated many questions of constitutionality and has had a great impact on the definition of individual rights. Students will analyze specific legal cases and discuss the issues surrounding each case to determine its impact on the rights of individuals v. the rights of society.
RESOURCES	Teacher Handbooks: Social Studies and Healthful Living "To Promote the General Welfare," and "The Purpose of Law" "The Law of Public Education" by Reutter Case studies State v. Stein (search and seizure) Horton v. Goose Creek (search with sniffer dogs) New Jersey v. T.L.O. (search/seizure with reasonable cause) Local and state law enforcement officials 18th Amendment and the Volstead Act (National Prohibition Act) N.C. Safe Roads Act of 1983
ACTIVITY	During the history of the United States, laws have been enacted to protect the rights of individuals and the rights of society. As political, economic and social changes have occured in the 1900s, several laws affecting the sale, purchase and use of alcohol, tobacco and drugs have been enacted. Ask students to review the legislation enacted during the 1900s that address alcohol production, sale, purchase and consumption. Read the 18th amendment and the Volstead Act and discuss why they were enacted and then repealed. Identify ways the government has attempted to control alcohol production, sale, purchase and use since 1945. Discuss the economic, political and social ramifications of the legislation. Research the formation of the Federal Drug Administration (FDA) and its role in the approval of drugs that may be sold in the United States. Discuss how the formation of the FDA has protected the well-being of individuals as well as society in general. Discuss the role of school authorities in protecting the rights of individuals and of society. Define the meaning of "in loco parentis", and discuss how this phrase has been interpreted in public school drug related cases. Discuss the economic, social and political ramifications of controlling alcohol and drug use in the school-aged population.
ASSESSMENT	Students will be able to discuss legislative attempts to control alcohol and drug abuse.

Curriculum Integration Activities
Feedback Form

Members of the Alcohol and Drug Defense Program (ADD) have worked with teachers and staff members from several content areas to develop integrated learning activities. We would like your feedback regarding these activities and would like to request any suggestions you might have for additional activities. If you rate any activity with a 1, 2, or 3, please include suggestions for improvement. If there are any parts of an activity that you find exceptional, please indicate these in writing. Activities are indicated by content and sequence (ex. B-A, CS-A or H-A).

		Needs Improvement				Very Good
I.	Format	1	2	3	4	5
II.	Resources					
III.	Activities					
	___- A	1	2	3	4	5
	___- B	1	2	3	4	5
	___-C	1	2	3	4	5

	Needs Improvement				Very Good
CS - D	1	2	3	4	5

IV. Evaluations

V. General Suggestions

Please return by June 1, 1988 to:

Linda Fitzharris, Curriculum Specialist
Department of Public Instruction
116 W. Edenton Street
Raleigh, North Carolina 27603-1712

Suggested Activity
Curriculum Integration
_____/Healthful Living
Alcohol and Other Drugs

Submitted By
Name_____
School_____

GOALS AND OBJECTIVES	
CONTENT SUMMARY	
RESOURCES	
ACTIVITY	
ASSESSMENT	

Suggested Activity
Curriculum Integration
_____/Healthful Living
Alcohol and Other Drugs

Submitted By
Name_____
School_____

GOALS AND OBJECTIVES	
CONTENT SUMMARY	
RESOURCES	
ACTIVITY	
ASSESSMENT	

Suggested Activity
Curriculum Integration
_____/Healthful Living
Alcohol and Other Drugs

Submitted By
Name_____
School_____

GOALS AND OBJECTIVES	
CONTENT SUMMARY	
RESOURCES	
ACTIVITY	
ASSESSMENT	

RESOURCE INFORMATION

432. THE VOLSTEAD ACT
October 28, 1919

(*U. S. Statutes at Large*, Vol. XXXXI, p. 305 ff.)

Ratification of the Eighteenth Amendment was proclaimed January 29, 1919: the amendment went into effect January 16, 1920. The National Prohibition Act, known popularly as the Volstead Act after its sponsor, Volstead of Minnesota, was passed over the veto of President Wilson. On the constitutionality of the Act, see Doc. No. 433. The literature on Prohibition is enormous, but most of it is of a controversial character. See E. H. Cherrington, *Evolution of Prohibition in the United States;* P. Odegard, *Pressure Politics;* C. Merz, *The Dry Decade;* H. Feldman, *Prohibition, Its Economic and Industrial Aspects;* I. Fisher, *Prohibition at Its Worst;* F. Franklin, *The A.B.C. of Prohibition;* The Federal Council of Churches of Christ in America, *The Prohibition Situation; Annals* of the American Academy of Pol. and Social Science, Vol. CIX. The famous Wickersham Report is in the U. S. 71st Congress, 3d Sess., *House Doc. No. 722.*

Be it Enacted. . . . That the short title of this Act shall be the "National Prohibition Act."

TITLE I.

TO PROVIDE FOR THE ENFORCEMENT OF WAR PROHIBITION.

The term "War Prohibition Act" used in this Act shall mean the provisions of any Act or Acts prohibiting the sale and manufacture of intoxicating liquors until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States. The words "beer, wine, or other intoxicating malt or vinous liquors" in the War Prohibition Act shall be hereafter construed to mean any such beverages which contain one-half of 1 per centum or more of alcohol by volume: . . .

SEC. 2. The Commissioner of Internal Revenue, his assistants, agents, and inspectors, shall investigate and report violations of the War Prohibition Act to the United States attorney for the district in which committed, who shall be charged with the duty of prosecuting, subject to the direction of the Attorney General, the offenders as in the case of other offenses against laws of the United States; and such Commissioner of Internal Revenue, his assistants, agents, and inspectors may swear out warrants before United States commissioners or other officers or courts authorized to issue the same for the apprehension of such offenders, and may, subject to the control of the said United States attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury. . . .

TITLE II.

PROHIBITION OF INTOXICATING BEVERAGES.

SEC. 3. No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

Liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, is-

sue permits therefor: *Provided*, That nothing in this Act shall prohibit the purchase and sale of warehouse receipts covering distilled spirits on deposit in Government bonded warehouses, and no special tax liability shall attach to the business of purchasing and selling such warehouse receipts. . . .

SEC. 6. No one shall manufacture, sell, purchase, transport, or prescribe any liquor without first obtaining a permit from the commissioner so to do, except that a person may, without a permit, purchase and use liquor for medicinal purposes when prescribed by a physician as herein provided, and except that any person who in the opinion of the commissioner is conducting a bona fide hospital or sanatorium engaged in the treatment of persons suffering from alcoholism, may, under such rules, regulations, and conditions as the commissioner shall prescribe, purchase and use, in accordance with the methods in use in such institution, liquor, to be administered to the patients of such institution under the direction of a duly qualified physician employed by such institution.

All permits to manufacture, prescribe, sell, or transport liquor, may be issued for one year, and shall expire on the 31st day of December next succeeding the issuance thereof: . . . Permits to purchase liquor shall specify the quantity and kind to be purchased and the purpose for which it is to be used. No permit shall be issued to any person who within one year prior to the application therefor or issuance thereof shall have violated the terms of any permit issued under this Title or any law of the United States or of any State regulating traffic in liquor. No permit shall be issued to anyone to sell liquor at retail, unless the sale is to be made through a pharmacist designated in the permit and duly licensed under the laws of his State to compound and dispense medicine prescribed by a duly licensed physician. No one shall be given a permit to prescribe liquor unless he is a physician duly licensed to practice medicine and actively engaged in the practice of such profession. . . .

Nothing in this title shall be held to apply to the manufacture, sale, transportation, importation, possession, or distribution of wine for sacramental purposes, or like religious rites, except section 6 (save as the same requires a permit to purchase) and section 10 hereof, and the provisions of this Act prescribing penalties for the violation of either of said sections. No person to whom a permit may be issued to manufacture, transport, import, or sell wines for sacramental purposes or like religious rites shall sell, barter, exchange, or furnish any such to any person not a rabbi, minister of the gospel, priest, or an officer duly authorized for the purpose by any church or congregation, nor to any such except upon an application duly subscribed by him, which application, authenticated as regulations may prescribe, shall be filed and preserved by the seller. The head of any conference or diocese or other ecclesiastical jurisdiction may designate any rabbi, minister, or priest to supervise the manufacture of wine to be used for the purposes and rites in this section mentioned, and the person so designated may, in the discretion of the commissioner, be granted a permit to supervise such manufacture.

SEC. 7. No one but a physician holding a permit to prescribe liquor shall issue any prescription for liquor. And no physician shall prescribe liquor unless after careful physical examination of the person for whose use such prescription is sought, or if such examination is found impracticable, then upon the best information obtainable, he in good faith believes that the use of such liquor as a medicine by such person is necessary and will afford relief to him from some known ailment. Not more than a pint of spiritous liquor to be taken internally shall be prescribed for use by the same person within any period of ten days and no prescription shall be filled more than once. Any pharmacist filling a prescription shall at the time indorse upon it over his own signature the word "canceled," together with the date when the liquor was delivered, and then make the same a part of the record that he is required to keep as herein provided. . . .

SEC. 18. It shall be unlawful to advertise, manufacture, sell, or possess for sale any utensil, contrivance, machine, preparation, compound, tablet, substance, formula direction, recipe advertised, designed, or intended for use in the unlawful manufacture of intoxicating liquor. . . .

SEC. 21. Any room, house, building, boat,

vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of this title, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or be imprisoned for not more than one year, or both. . . .

SEC. 25. It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title or which has been so used, and no property rights shall exist in any such liquor or property. . . . No search warrant shall issue to search any private dwelling occupied as such unless it is being used for the unlawful sale of intoxicating liquor, or unless it is in part used for some business purposes such as a store, shop, saloon, restaurant, hotel, or boarding house. . . .

SEC. 29. Any person who manufactures or sells liquor in violation of this title shall for a first offense be fined not more than $1,000, or imprisoned not exceeding six months, and for a second or subsequent offense shall be fined not less than $200 nor more than $2,000 and be imprisoned not less than one month nor more than five years.

Any person violating the provisions of any permit, or who makes any false record, report, or affidavit required by this title, or violates any of the provisions of this title, for which offense a special penalty is not prescribed, shall be fined for a first offense not more than $500; for a second offense not less than $100 nor more than $1,000, or be imprisoned not more than ninety days; for any subsequent offense he shall be fined not less than $500 and be imprisoned not less than three months nor more than two years. . . .

SEC. 33. After February 1, 1920, the possession of liquors by any person not legally permitted under this title to possess liquor shall be prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the Provisions of this title. . . . But it shall not be unlawful to possess liquors in one's private dwelling while the same is occupied and used by him as his dwelling only and such liquor need not be reported, provided such liquors are for use only for the personal consumption of the owner thereof and his family residing in such dwelling and of his bona fide guests when entertained by him therein; and the burden of proof shall be upon the possessor in any action concerning the same to prove that such liquor was lawfully acquired, possessed, and used. . . .

433. NATIONAL PROHIBITION CASES
253 U. S. 350
1920

These were seven cases involving the constitutionality of the Volstead Act of 1919 and the validity of the Eighteenth Amendment. This is the only case in the history of the court where the court stated its opinion of a question of constitutional law without giving its reasoning.

VAN DEVANTER, J., announced the conclusions of the court.

Power to amend the Constitution is reserved by Article V, which reads: . . . The text of the Eighteenth Amendment, proposed by Congress in 1917 and proclaimed as ratified in 1919, 40 Stat. at L. 1050, 1941, is as follows: . . .

The cases have been elaborately argued at the bar and in printed briefs; and the arguments have been attentively considered, with the result that we reach and announce the following conclusions on the questions involved.

1. The adoption by both houses of Congress, each by a two-thirds vote, of a joint resolution proposing an amendment to the Constitution sufficiently shows that the proposal was deemed necessary by all who voted for it. An express declaration that they regarded it as necessary is not essential. None of the resolutions whereby prior amendments were proposed contained such a declaration.

2. The two-thirds vote in each house which is required in proposing an amendment is a vote of two-thirds of the members

present—assuming the presence of a quorum —and not a vote of two thirds of the entire membership, present and absent. *Missouri Pacific Ry. Co.* v. *Kansas,* 248 U. S. 276.

3. The referendum provisions of state constitutions and statutes cannot be applied, consistently with the Constitution of the United States, in the ratification or rejection of amendments to it. *Hawke* v. *Smith,* 253 U. S. 221.

4. The prohibition of the manufacture, sale, transportation, importation and exportation of intoxicating liquors for beverage purposes, as embodied in the Eighteenth Amendment, is within the power to amend reserved by Article V of the Constitution.

5. That amendment, by lawful proposal and ratification, has become a part of the Constitution, and must be respected and given effect the same as other provisions of that instrument.

6. The first section of the amendment—the one embodying the prohibition—is operative throughout the entire territorial limits of the United States, binds all legislative bodies, courts, public officers and individuals within those limits, and of its own force invalidates every legislative act—whether by Congress, by a state legislature, or by a territorial assembly—which authorizes or sanctions what the section prohibits.

7. The second section of the amendment—the one declaring "The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation"—does not enable Congress or the several States to defeat or to thwart the prohibition, but only to enforce it by appropriate means.

8. The words "concurrent power" in that section do not mean joint power, or require that legislation thereunder by Congress, to be effective, shall be approved or sanctioned by the several States or any of them; nor do they mean that the power to enforce is divided between Congress and the several States along the lines which separate or distinguish foreign and interstate commerce from intrastate affairs.

9. The power confided to Congress by that section, while not exclusive, is territorially co-extensive with the prohibition of the first section, embraces manufacture and other intrastate transactions as well as importation, exportation and interstate traffic, and is in no wise dependent on or affected by action or inaction on the part of the several States or any of them.

10. That power may be exerted against the disposal for beverage purposes of liquors manufactured before the amendment became effective just as it may be against subsequent manufacture for those purposes. In either case it is a constitutional mandate or prohibition that is being enforced.

11. While recognizing that there are limits beyond which Congress cannot go in treating beverages as within its power of enforcement, we think these limits are not transcended by the provision of the Volstead Act (Title II, § 1), wherein liquors containing as much as one-half of one per cent. of alcohol by volume and fit for use for beverage purposes are treated as within that power. *Jacob Ruppert* v. *Caffey,* 251 U. S. 264.

WHITE, C. J., concurring. I profoundly regret that in a case of this magnitude, affecting as it does an amendment to the Constitution dealing with the powers and duties of the national and state governments, and intimately concerning the welfare of the whole people, the court has deemed it proper to state only ultimate conclusions without an exposition of the reasoning by which they have been reached. . . .

MCKENNA, J., and CLARKE, J., delivered dissenting opinions.

ALCOHOL/DRUG EDUCATION FOR DRIVER EDUCATION

Printed and Distributed by the

North Carolina Department of Public Instruction

In Cooperation with the

Governor's Highway Safety Program

Funds Provided by

National Highway Traffic Safety Administration

of the United States Department of Transportation

I. DEFINITION OF TERMS

A. *Public Vehicular Area*

These areas generally include roadways, and parking lots open to and used by the public.

B. *Operator/Driver*

A person in actual physical control of a vehicle in motion in which has the engine running.

C. *Vehicle*

Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks, provided, that for purposes of this Chapter, bicycles shall be deemed vehicles, and every rider of a bicycle upon a highway shall be subject to the provisions of this Chapter applicable to the driver of a vehicle, except those which by their nature can have no application.

D. *Highway/Street*

The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the public as a matter of right for the purposes of vehicular two terms shall be used synonymously.

II. DRIVER'S LICENSE A "CONDITIONAL PRIVILEGE"

A. The operation of a motor vehicle on a public highway is not a natural right. It is a *conditional privilege* which the State in the interest of public safety acting under its police power may regulate or control, and the State may suspend or revoke the driver's license. (Shue v. Scheidt, 252 N. C. 561, 114 S. E. 2nd 237 (1960)).

III. IMPLIED CONSENT LAW (G. S. 20-16.2)

A. Any person who drives a vehicle on a highway or public vehicular area thereby gives consent, to a chemical analysis of his breath or blood for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was driving or operating a motor vehicle while under the influence of intoxicating liquor. The test or tests shall be administered at the request of a law-enforcement officer having REASONABLE GROUNDS to believe the person to have been driving or operating a motor vehicle on a highway or public vehicular area while under the influence of intoxicating liquor.

the law-enforcement officer shall designate which of the aforesaid tests shall be administered.

B. Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed *NOT* to have withdrawn the consent, and the test or tests may be administered.

C. Administration of the breathalyzer test is *not* dependent upon the *legality* of the arrest but hinges solely upon the law-enforcement officer *having reasonable grounds to believe* the person to have been driving or operating a motor vehicle on a highway or public vehicular area while under the influence of intoxicating liquor. (State v. Eubanks, 238 N. C. 556, 196 S. E. ed. 706 (1973)).

D. *Failure* by officers to advise defendant of his right to refuse to take a breathalyzer test does not render the result of the test inadmissable in evidence, defendant having impliedly consented to the test by virtue of driving an automobile on the public highways of the State, and the test having been administered after arrest and without the use of force or violence (State v. McCabe, 1 N. C. App. 237 161 S. E. 2nd 42 (1968)).

E. The full impact of this section requires an operator of a motor vehicle who has been charged with the offense of driving under the influence of intoxicating liquor, to take a breathalyzer test, which means the person to be tested must follow the instructions of the breathalyzer operator. A failure to follow such instructions provides an adequate basis for the trial court to conclude the petitioner willfully refused to take a chemical test of breath in violation of law (Bell v. Powell, 41 N. C. App. 131, 254 S. E. 2nd 191 (1979)).

IV. SAFE ROADS ACT

This act, effective October 1, 1983, repeals the present laws on drunk driving in North Carolina and replaces them with the single offense of "driving while impaired-DWI."

DWI can be proven in one of two ways:

- By proving the driver's physical or mental faculties are appreciably impaired by alcohol, drugs, or a combination of both; or
- By proving the driver's alcohol concentration (AC) is 0.10 or more at any relevant time after driving.

PLEA BARGAINING

If a person is charged with DWI, the charge cannot be reduced to a lesser included offense.

Automatic 10-Day Revocation

A driver charged with DWI who refuses to be tested or who has an alcohol concentration of 0.10 faces an automatic and immediate 10-day revocation of his license. He may not obtain a limited driving privilege for this period.

Sentencing Hearing

After a DWI conviction, the trial judge must hold a sentencing hearing to determine punishment. The new law establishes five (5) levels of punishment determined by evidence of grossly aggravating, aggravating, and mitigating factors.

Grossly Aggravating Factors Are:

- One or more convictions for an impaired driving offense within 7 years;
- Driving while license is revoked under an impaired driving revocation;
- Serious injury to another caused by defendant's impaired driving.

Aggravating Factors Are:

- Gross impairment or an alcohol concentration of 0.20 or more;
- Especially reckless driving;
- Negligent driving leading to an accident causing over $500 damage or personal injury;
- Driving while license revoked;
- Two or more prior convictions of a non-impaired driving offense carrying 3 driver's license points within 5 years, or one or more prior convictions of an impaired driving offense more than 7 years old;
- Conviction of speeding to elude arrest;
- Conviction of speeding more than 30 mph over the posted limit;
- Passing a stopped school bus;
- Any other aggravating factor.

Mitigating Factors Are:

- Slight impairment, solely from alcohol, with an AC not exceeding 0.11;
- Slight impairment, solely from alcohol, and no chemical test available to the defendant;

- o Safe driving record-no serious traffic violations within 5 years of the offense;

- o Impairment primarily from lawfully prescribed drug;

- o Voluntary submission for assessment and treatment before trial;

- o Any other mitigating factor.

Levels of Punishmen*

Where grossly aggravating factors are present:

Level 1:

If two or more impaired driving offenses within 7 years, or any other two grossly aggravating factors are present, punishment is a mandatory minimum of 14 days and up to 2 years in jail. A fine of up to $2,000 may be imposed.

Level 2:

If one grossly aggravating factor is present, punishment is a mandatory minimum of 7 days and up to 1 year in jail. A fine of $1,000 may be imposed.

Where no grossly aggravating factors are present:

Level 3:

If aggravating factors outweigh mitigating factors, punishment is a minimum of 72 hours in jail, or 72 hours of community service, or a 90-day revocation of driving privileges, or any combination of the three. A fine of up to $500 may be imposed.

Level 4:

If neither set of factors outweighs the other, punishment is 48 hours in jail, or 48 hours of community service, or a 60-day revocation of driving privileges, or any combination of the three. A fine of up to $250 may be imposed.

Level 5:

If mitigating factors outweigh aggravating factors, punishment is 24 hours in jail, or 24 hours of community service, or a 30-day loss of driving privileges, or any combination of the three. A fine of up to $100 may be imposed.

- o Conditions of probation

$100 fee charge for Alcohol School or Community Service.

Drinking Age

The law raises the age to buy and possess beer and unfortified wine to 19. The legal age to buy or possess fortified wine or spirituous liquor remains 21.

Youthful Offender

If a provisional licensee (16 or 17) is convicted of DWI, or refuses to submit to chemical analysis, or is caught driving with any amount in his body or controlled substance in his blood (excluding lawful dosage of controlled substance) his license will be revoked until he is 18, or for 45 days, whichever is longer.

The statute provides a one-year license revocation if:

- an underage person attempts to purchase or purchases an alcoholic beverage.
- an underage person aids or abets another underage person to attempt to purchase or purchase an alcoholic beverage.
- an underage person attempts to purchase, purchases, or possesses alcoholic beverages by using or attempting to use a fraudulent driver's license or other I. D.

Other Offender

The statute provides a one-year license revocation if any other person lends his driver's license or any other I. D. for the purpose of illegal purchase of alcohol.

Limited Driving Privileges

Limited driving privileges (LDP) after conviction of a DWI offense have been curtailed severely. LDP is only available under non-grossly aggravating punishment levels. In some instances, a person must complete a period of court-ordered non-operation prior to obtaining LDP. The privilege extends only to driving for employment, education, treatment, community service, household maintenance, and emergency health needs.

Roadblocks

Law enforcement agencies may set up roadblocks to check for impaired drivers.

Preventive Detention

Magistrates must order a person charged with DWI and who is dangerously impaired held until the person is no longer impaired or until a responsible, sober adult will take responsibility for him. In no event may he be held longer than 24 hours.

Implied Consent

A person charged with DWI may be asked to submit to a chemical test of his blood or breath. Willful refusal to take the test carries a 12-month license revocation. A limited driving privilege may be available the last six months of this period.

Drinking and Opened Containers

A driver may not consume any alcoholic beverages, including beer or unfortified wine, while driving. A driver may not transport open containers of fortified wine or spirited liquors in the passenger area of the vehicle.

Forfeiture

Any person convicted of an impaired driving offense while his license is revoked for an earlier impaired driving offense could forfeit his vehicle. The statute protects innocent third parties.

Problem Drinkers

In almost all cases, a person convicted of driving with an AC level of 0.20 or more, or who is arrested for a second or subsequent offense within 5 years, will be required to undergo a substance abuse assessment.

ADETS Revocation

A person assigned to an Alcohol Drug Education Traffic School who willfully fails to complete the program sucessfully will have his license revoked for 12 months.

Dram Shop

- Negligent sale of beer, wine or liquor to an underage person may subject the seller to civil liability if the minor then consumes the beverage and as a result of consuming that beverage has an accident while impaired. There is a $500,000 limit on the amount that can be collected, and proof of good pratices (such as checking ID's) may help prevent the imposition of liability.

- The ABC Board must suspend the seller's ABC permit until the judgement is paid.

- There is no liability for refusing to sell to or serve a customer who cannot produce a valid I. D.

- A seller may hold a person's I. D. for a reasonable time to check its validity if the seller tells the person why it is being held.

Know Your Limit

Driving after excessive drinking is dangerous and punishable by law. So, if you do drink and drive, find your own personal limit and stay within it.

Reproduced from "School Law Bulletin"
Summer 1987
Published by the Institute of Government

Principles of Search and Seizure in the Public Schools

by Ann Majestic

In *New Jersey v. T.L.O.*,[1] a landmark decision handed down in January 1985, the United States Supreme Court established the constitutional standard for searches of individual students by school officials. The Court held that the Fourth Amendment's prohibition against unreasonable searches and seizures applies to searches of public school students by school officials. In agreeing with the majority of lower court opinion, it held that whether a school official may search a student depends on "the reasonableness, under all the circumstances, of the search."[2] Finding that the school setting requires some easing of the restrictions commonly applied to police searches, the Court also held school authorities need not have either a warrant or probable cause in order to search a student. Ordinarily a government search must be based on "probable cause," defined by the Supreme Court as facts that would "warrant a man of reasonable caution in the belief that the search will turn up incriminating evidence."[3]

In *T.L.O.* the Court outlined a two-pronged test, commonly referred to as the "reasonable suspicion" requirement. Under the first part of this test, a student may be searched by a school official "when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school."[4] In addition, the reasonableness test requires that the "search as actually conducted [be] reasonably related in scope to the circumstances which justify the interference in the first place."[5] For the scope of the search to be permissible, the search must be "reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction."[6]

The Supreme Court emphasized that searches based on reasonable suspicion that are reasonable in scope may be conducted to detect even minor infractions of school rules. The majority opinion expressly rejected Justice Stevens's suggestion in his dissenting opinion that certain school rules are "too trivial" to justify a search.[7]

In its *T.L.O.* decision, the Supreme Court left unanswered four legal issues that often arise in school search cases: (1) whether the reasonable suspicion standard applies to searches of lockers, desks, or other school property; (2) whether suspicion of a particular student is necessary before school officials may conduct a search; (3) whether evidence illegally seized in schools is admissible in court or in school disciplinary proceedings; and (4) what standard applies to school searches initiated by the police.

The author is with the firm of Tharrington, Smith, and Hargrove in Raleigh.

1. 469 U.S. 325 (1985).
2. *Id.* at 341.
3. Carroll v. United States, 267 U.S. 132, 162 (1925).
4. *Id.* at 342.
5. *Id.* at 341.
6. *Id.* at 342.
7. *Id.* at 342, n.9.

The Reasonable Suspicion Standard

The reasonable suspicion standard outlined by the Supreme Court in *T.L.O.* offers a broad outline for judging the legality of school searches. But the test relies heavily on an analysis of the facts of each case rather than on a clear formula that can be easily applied. Fortunately, the Court did not write on a clean slate in deciding *T.L.O.* A number of lower federal and state courts have enumerated several factors that are relevant in determining whether a school search was based on reasonable suspicion. These include (1) consideration of the child's age, history, and record in school; (2) the prevalence and seriousness of the problem in the school to which the search was directed; (3) the degree to which there is a compelling need to make a search without delay and further investigation; (4) the probative value and reliability of the information used as the justification for the search; (5) the particular school official's experience with the student; and (6) the experience of the school official involved with the type of problem to which the search was directed.[8]

Informants

Most school searches are undertaken by a principal or assistant principal on the basis of a tip from a student or other informant. The Supreme Court has stated that the standard for judging police searches that are based on informant tips is the "totality of circumstances," in which the truthfulness, reliability, and basis of the informant's knowledge are weighed to decide "the common sense, practical question whether there is 'probable cause' to believe that contraband or evidence is located in a particular case."[9] Because the reasonable suspicion standard is less exacting than the probable cause requirement applied to police searches, school officials have even more leeway in undertaking searches based on informant tips. Lower court decisions in this area suggest that a minimal showing of reliability will satisfy Fourth Amendment standards.

Two cases decided after *T.L.O.* illustrate the courts' standard analysis of informant-based school searches. In a case from the State of Washington,[10] a student's locker was searched after a fellow student told school officials that the first student was selling drugs out of a blue metal box located in his locker. When they opened the locker, the searchers found hallucinogenic mushrooms inside the box. The evidence was turned over to the police, and the student was successfully prosecuted for possession and intent to deliver a controlled substance.

The appellate court upheld the search. It found that the informant had a locker in the same locker bay as the defendant and therefore had the opportunity to acquire the information he divulged. The court also noted that several teachers had reported prior occasions when the defendant appeared to be under the influence of drugs or alcohol and that the student was known to frequent a place across from the school that was believed to be the site of student drug trafficking. The court held that these facts provided a reasonable basis for conducting the search.

In 1985 the West Virginia Supreme Court upheld a school search in a case not so clear cut.[11] In this case an assistant principal smelled alcohol on the breath of a student who, when questioned, admitted that he had consumed a beer at the defendant's house just before he came to school. On the basis of this information the assistant principal, suspecting that the defendant might have brought some type of alcohol to school, searched the defendant's locker. The school officials found no alcohol but did find marijuana and drug paraphernalia in the defendant's jacket. The West Virginia Supreme Court upheld this search, stating that although the admission of the fellow student would not have provided probable cause, the information satisfied the reasonable suspicion standard for a school search.

Even anonymous tips are not automatically considered unreliable. In a recent Illinois case,[12] a high school administrator received an anonymous telephone tip from a person who claimed to be a parent. The caller said that she found her daughter with marijuana cigarettes purchased from another student, that this student kept the marijuana in a Marlboro box in his locker, and that the box was in his locker that day. The administrator searched the locker and found the box with marijuana inside.

Later that day another call came from a woman who sounded like the first caller. She reported that she found her daughter with marijuana that had been purchased from the original suspect and another student. She said the lat-

8. *See, e.g.*, A.B. v. State, 440 So.2d 500 (Fla. Dist. Ct. App. 1983); Doe v. State, 88 N.M. 827, 540 P.2d 827 (N.M. App. 1975); People v. D., 34 N.Y.2d 483, 358 N.Y.S.2d 403, 315 N.E.2d 466 (1974).

9. Illinois v. Gates, 449 U.S. 411 (1983).

10. State v. Brooks, 718 P.2d 837 (Wash. App. 1986).

11. State v. Joseph T., 336 S.E.2d 728 (W.Va. 1985).

12. Martens v. District No. 220, 620 F. Supp. 29 (D.C. Ill. 1985).

ter student kept drug paraphernalia in his coat lining and that it might be on him that day.

When confronted, the second suspect emptied his pockets of a pipe that contained marijuana residue. The student was expelled from school, but no criminal action was taken against him. The student later sued the school system for damages, arguing that the search was illegal and the fruits of the search were improperly admitted in his disciplinary hearing.

In a thorough discussion, the federal trial court held that the anonymous tip was adequate to satisfy even the probable cause standard. The court listed the following factors that supported reliance on the tip. (1) A tip that a student possessed drug paraphernalia was "not inherently implausible" in light of a significant drug problem at the school. (2) The tip was "presumptively more credible" from a member of the public than from the typical police informer who comes from a criminal environment. (3) The successful search earlier that day lent substantial evidence that the tip was accurate. And (4) the tip was a detailed rather than blanket accusation, describing the defendant as a drug dealer and indicating where he would have the drug paraphernalia.[13]

In 1968 the Illinois Supreme Court upheld a police search, based on an anonymous phone call, of a student suspected of carrying a gun on campus.[14] Apparently swayed by the emergency situation, the court dispensed with the probable cause requirement generally applied to law enforcement searches. It held that the search was valid because there was "a complete absence of any possible element of gain" to motivate the informant to give false information.[15] Also, the court held that the police were not required to delay their search in order to determine whether the informant was in fact anonymous or whether the school official was withholding the tipster's identity in order to avoid exacerbating an already tense situation involving rival student factions.[16]

In contrast, the New Jersey Supreme Court overturned the conviction of a student charged with drug possession, finding in part that there was no reasonable suspicion to support a locker search conducted on the basis of a telephone call "from a person claiming to be the father of the student" and a "rumor" that the student had sold drugs in school a year before.[17] Characterizing the phone call as an anonymous tip, the court held that there was neither a reliable informant nor independent corroboration to support the search.[18]

School Officials' Prior Experience with the Problem

The experience of school officials in detecting certain violations of rules of conduct or in recognizing suspicious behavior has at times been sufficient to establish reasonable suspicion. For example, a court upheld a search based on a school official's testimony that he smelled marijuana in the air surrounding certain students, whom he then searched.[19] Three years later the same court found a search to be reasonable that was based on a school administrator's observation that a student appeared to be intoxicated.[20] In this case the dean of students overheard a student trying to buy marijuana from the defendant. The dean took the defendant into his office for questioning and searched him when he noticed the boy's unsteady walk, bloodshot eyes, and impaired speech. The court found that the search was justified under these circumstances.

While courts frequently defer to teachers' judgment and experience in finding reasonable suspicion to justify a search, school officials cannot act on a "hunch" and expect to have their search upheld.

In a recent Michigan court decision overturning a school search, a high school girl was seen hiding behind a parked car in the school parking lot during class time.[21] When confronted by the school security guard, the girl gave a false name. She was taken to the assistant principal's office and required to empty her purse, which contained stolen "readmittance slips." The girl was then told to empty her pockets. Next, a female assistant principal searched her for drugs. This administrator, with the school secretary observing, required the girl to undress down to her underwear. Without touching her, the woman examined the girl but found no drugs.

On these facts the federal court found the search was invalid because there was no evidence to suggest that the student possessed drugs. In the court's words, her behavior

13. *Id.* at 32.
14. *In re* Boykin, 39 Ill. 2d 617, 237 N.E.2d 460 (1968).
15. *Id.* at 619, 237 N.E.2d at 461.
16. *Id.*
17. State v. Engerud, 94 N.J. 331, 348, 463 A.2d 934, 943 (1983).
18. In order for law enforcement officers to conduct a search based on an informant's tip, a reliable informant and independent corraboration are usually required.
19. Nelson v. State, 319 So.2d 154 (Fla. Dist. Ct. App. 1975).
20. State v. E.W.E., 360 So.2d 148 (Fla. Dist. Ct. App. 1978).
21. Cales v. Howell Pub. Schools, 635 F. Supp. 454 (E.D. Mich. 1985).

"could have indicated she was truant, or that she was stealing hubcaps, or that she had left class to meet a boyfriend."[22] It is not enough to suspect a student of violating *some* rule: "[T]he burden is on the administrator to establish that the student's conduct is such that it creates a reasonable suspicion that a specific rule or law has been violated and that a search could reasonably be expected to produce evidence of that violation."[23]

After *T.L.O.* was decided, a California court overturned a search of a student's calculator case that was made in response to the student's "furtive gestures" when he was found out of class.[24] An assistant principal stopped the student while he and two friends were walking across campus between classes. As the administrator questioned the students about their tardiness, he noticed the defendant place his calculator "in a palmlike gesture to his side and then behind his back."[25] When the assistant principal attempted to look at the case, the student announced that he could not be searched without a warrant. After continued resistance by the student, the assistant principal finally took the case from him and found marijuana and rolling papers inside.

The Supreme Court of California found this search to be unconstitutional because the assistant principal had "no facts to support a reasonable suspicion that [the student] was engaged in a proscribed activity justifying a search."[26] Where the administrator had no prior knowledge or information concerning the student's use or possession of contraband, his "furtive gestures" alone did not provide sufficient cause for a search.

A Florida appeals court reached a similar result in a case predating *T.L.O.*[27] A teacher saw two students going into an area generally known to be off limits. The teacher testified that the students acted "suspicious," seemed to be involved in an exchange, and were startled when he approached them. One student was holding an unlit cigarette in violation of school rules. On the basis of these observations by the teacher, the students were subjected to a pat-down search and their pockets were searched. A marijuana cigarette was found in one student's wallet. The court held that these circumstances did not provide reasonable suspicion to justify a search.[28]

The Student's History and Record in School

Although suspicious but equivocal actions by students, standing alone, generally will not provide sufficient grounds for conducting a search, information concerning a student's prior record of misbehavior added to these actions may establish reasonable suspicion.

For example, the Wisconsin Court of Appeals upheld a search of a student's clothing when the student, who was known to have carried razor blades and a knife to school on occasion, behaved suspiciously in the presence of his teacher.[29] When the teacher entered the classroom where the student was standing with two or three others, the student was unusually quiet and the others were "eyeing" him. When the teacher approached, the student turned, tried to walk away, and made several clutching motions over his shirt pocket. In this case the court held that the student's previous behavior and the teacher's experience with him were factors that established the reasonableness of the search.

In contrast, a student's prior history of theft was not enough to justify a strip search when she was found in a classroom during a fire drill, crouched behind a door, with another student's purse and several school posters beside her that she admitted taking.[30] In this case the federal court of appeals found that there was no reasonable suspicion to justify this search because it was undertaken before school officials determined whether anything was missing from the purse.

Searches of Property on School Premises

The Supreme Court has held that the Fourth Amendment protects a person when he has a reasonable expectation of privacy in a particular place. In *T.L.O.* the Court expressly left open the question of whether students have a legitimate expectation of privacy in school storage spaces like lockers and desks.[31] The *T.L.O.* opinion also did not consider whether student cars on campus may be inspected.

22. *Id.* at 457.
23. *Id.*
24. *In re* William G., 40 Cal. 3d 550, 221 Cal. Rptr. 118, 709 P.2d 1287 (1985).
25. 221 Cal. Rptr. at 120.
26. *Id.* at 128.
27. T.A. O'B. v. State, 459 So.2d 1006 (Fla. App. 1984).
28. *See also* Bilbrey v. Brown, 738 F.2d 1462 (9th Cir. 1984); A.H. v. State, 440 So.2d 500 (Fla. App. 1983). *Compare* State v. Young, 234 Ga. 483, 216 S.E.2d 586, *cert. denied*, 423 U.S. 1039 (1975); State v. Baccino, 282 A.2d 869 (Del. Super. 1971).
29. I.L. v. Circuit Court of Washington County, 90 Wis.2d 585, 280 N.W.2d 343 (1979).
30. M.M. v. Anker, 607 F.2d 588 (2d Cir. 1979).
31. 469 U.S. at 337.

Search of Student Lockers

As a rule, schools retain ultimate ownership of student lockers. Student handbooks typically inform students of this retained ownership and describe the student's right to use the locker for authorized purposes only. Given the nature and location of school lockers, courts have generally held that students have no valid expectation of privacy in their lockers and, consequently, no right to Fourth Amendment protection when the locker is searched.[32] Despite well-established case law that supports the school's authority to search lockers without student consent, recent cases are suggesting that, absent a school system policy that explicitly removes any student expectation of privacy in their lockers, even these searches must be based on reasonable suspicion.

In *State v. Engerud*,[33] a companion case to *T.L.O.*, the school authorities searched a student's locker, acting on an anonymous tip that the locker contained drugs and on a year-old rumor that the suspected student sold drugs at school. The search disclosed two plastic bags of methamphetamine and a package of marijuana rolling papers.

On appeal to the New Jersey Supreme Court, the student argued that the evidence of drug possession should be suppressed on the grounds that the search was in violation of the Fourth Amendment. The court agreed, finding there was neither a reliable informer nor sufficient corroboration to support the search and that the student retained an expectation of privacy in the contents of his locker in the absence of a school policy of regularly inspecting student lockers.[34]

Search of Student Automobiles

In 1983 a Florida court held that the Fourth Amendment does not prohibit school officials from patrolling student parking lots or inspecting the outside of student cars[35]—an opinion consistent with the dominant judicial view. In this case, during a routine patrol, a teacher's aide discovered drug paraphernalia on the seat of a student's car. The car was opened and drugs were found. The court held that reasonable suspicion, while not required to justify the general surveillance, was necessary in order to search the car's interior. It went on to find that the discovery of the drug paraphernalia in plain view through the car window supplied the necessary suspicion to justify the search of the inside of the car.

Individualized Suspicion/ Mass Searches

The presence of drugs and the prevalence of theft in the public schools are problems faced daily by school officials across the country. For this reason it is not unusual to hear of cases in which an entire class of students is asked to empty their pockets, purses, and book bags in the school's effort to discover lost property or contraband. Is such a search of an entire class constitutional, or must school officials have individualized suspicion of each student who is searched?

In *T.L.O.* the Supreme Court specifically noted that it was not deciding whether individualized suspicion is an essential element of the reasonableness standard for school searches. It indicated that individualized suspicion is not an "irreducible requirement" of the Fourth Amendment and that exceptions have to be made when "the privacy interests implicated by a search are minimal and where "other safeguards" are available to 'assure that the individual's reasonable expectation of privacy is not subject to the discretion of the official in the field.' "[36]

In a case decided days before *T.L.O.*, the Washington State Supreme Court invalidated a mass search of students who were on an overnight school band trip.[37] Because two students had been caught with liquor in their hotel rooms on a previous trip, students were now required to submit to a predeparture search of their luggage. The student-plaintiff and his parents objected to the search. The student arrived for a band trip with a locked suitcase and a note from his mother stating that she had searched the bag and found nothing illegal. Nonetheless, the student was not allowed to go on the trip because of his refusal to submit to a search.

---

32. State v. Joseph T., 336 S.E.2d 728 (W.Va. 1985); Zamora v. Pomeroy, 639 F.2d 662 (10th Cir. 1981); State v. Stein, 203 Kan. 638, 456 P.2d 1 (1969), *cert. denied*, 392 U.S. 947 (1970); People v. Overton, 20 N.Y.2d 360, 283 N.Y.S.2d 22, 229 N.E.2d 596 (1967), *vacated and remanded*, 393 U.S. 85 (1968), *original judgment affd*, 24 N.Y.2d 532, 301 N.Y.S.2d 479, 249 N.E.2d 366 (1969).

33. 94 N.J. 331, 463 A.2d 934 (1983).

34. *See also In re* William G., 40 Cal.3d 550, 221 Cal. Rptr. 118, 709 P.2d 1287 (1985) (in dicta, court disapproves "indiscriminate searches" of lockers).

35. State v. D.T.W., 425 So.2d 1383 (Fla. App. 1983).

36. 469 U.S. at 342, n.8.

37. Kuehn v. Renton School Dist. No. 403, 103 Wash. 2d 594, 694 P.2d 1078 (1985). *See also In re* William G., 40 Cal. 3d 550, 221 Cal. Rptr. 118, 709 P.2d 1287 (1985) (decided after *T.L.O.*, holds generally that "[s]earches of students by public school officials must be based on a reasonable suspicion that the student or students have engaged, or are engaging, in a proscribed activity").

Applying a "reasonable belief" standard, the court held that the school's search violated the Fourth Amendment because it was not supported by individualized suspicion. It also stated that the fact that the trip was voluntary and the search was conducted by parent members of the band's booster group did not make the search constitutional, since the event was school-sponsored and the parents' participation was school-sanctioned.

Another mass-search case decided by a New York federal district court in 1977 involved the disappearance of $3 in a fifth-grade classroom from which students had previously lost money, lunches, and other items.[38] In an effort to find the money, teachers first inspected the children's coats and then instructed the students to empty their pockets and remove their socks. When the money still had not been found, each child was taken to a restroom and strip-searched by a teacher. On the basis of these facts, the court held that the search was invalid because the teachers did not narrow their examination to specific suspected children.

While the court in this case had no trouble invalidating the general search of fifth graders for lost money, it suggested that it might have reached a different result if the search had been aimed at discovering concealed drugs. The court indicated that the presence of drugs introduced a much greater risk and implied that the school officials might, under such circumstances, be warranted in conducting a general search.

Strip Searches

In addition to the cases involving mass searches, "strip search" cases have received much recent attention. These cases ask whether some types of school searches can be justified even when based on reasonable suspicion.

Although the Supreme Court's majority opinion in *T.L.O.* did not address specifically the propriety of strip searches, the second prong of the Court's reasonableness test provides some guidance on the permissibility of such searches. The Court stated that the scope of the search must be "reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction."[39] In his dissenting opinion in *T.L.O.*, Justice Stevens interpreted this language as "obviously designed to prohibit physically intrusive searches of students by persons of the opposite sex for relatively minor offenses."[40] Thus the Court's apparent view is that strip searches should be reserved for serious offenses in which it is reasonably likely that contraband has been concealed on the student's body. If this interpretation is widely adopted, it is likely that strip searches of elementary students will rarely be upheld, given the nature of the infractions they are likely to commit and the relative infrequency with which these children have dangerous contraband.

Lower courts have condemned strip searches by school officials when not based on reasonable suspicion. In one case a federal appeals court in Indiana allowed a recovery of money damages when a student was strip-searched without reasonable suspicion.[41] This decision can be read only as categorically invalidating strip searches of school children. Leaving little room for doubt, the court declared:

> It does not require a constitutional scholar to conclude that a nude search of a thirteen-year-old child is an invasion of constitutional rights of some magnitude. More than that: It is a violation of any known principle of human decency. Apart from any constitutional readings and rulings, simple common sense would indicate that the conduct of the school officials in permitting such a nude search was not only unlawful but outrageous under "settled indisputable principles of law". . . . *Wood v. Strickland* accords immunity to school officials who act in good faith *and within the bounds of reason*. We suggest as strongly as possible that the conduct herein described exceeded the "bounds of reason" by two and a half country miles.[42]

Earlier a federal court of appeals affirmed a lower court decision that allowed a student to collect damages for the humiliation she suffered in a strip search.[43] Under the circumstances presented, the court found that the school lacked reasonable suspicion to conduct the search. This case demonstrates the more restrictive approach courts apply to the reasonable suspicion test in strip-search cases. The student, who had a history of thefts at school, was found during a fire drill crouched behind a door with the purse of another student and several posters belonging to the school. The court rejected the school administrators' claim that the strip search was necessary to determine

38. Bellnier v. Lund, 438 F. Supp. 47 (N.D.N.Y. 1977).

39. 469 U.S. at 342.

40. 469 U.S. at 382.

41. Doe v. Renfrow, 475 F. Supp. 1012 (N.D. Ind. 1979), *aff'd*, 631 F.2d 91, *rehearing denied*, 635 F.2d 582 (7th Cir. 1980), *cert. denied*, 451 U.S. 1022 (1981).

42. 631 F.2d at 92-93.

43. M.M. v. Anker, 607 F.2d 588 (2d Cir. 1979).

whether the student had taken anything else, when nothing else had been reported missing.

Having reached its decision, the court went on to comment on the general propriety of strip searches. While not as damning as the Indiana court quoted above, it by no means approved. The federal court proposed that a uniform standard of reasonableness for school searches may not be appropriate; rather, as the intrusiveness of the search increases, the standard should approach the stricter probable cause requirement. Thus, while this court would not completely ban strip searches in schools, it would severely limit them.

This sliding-scale approach to the quantum of suspicion required for a strip search was advocated in a 1984 decision of another federal appeals court.[44] In this case two middle school students were strip-searched on the basis of a report by a school bus driver that several days earlier she had seen one of the students carrying a paper bag concealed under his jacket, that she had seen the two students exchange something on the playground the morning of the search, that the older brother of one of the students previously had offered marijuana to another bus driver, and that there was a serious drug problem at the local high school that school officials were concerned would spread to the elementary school. The court found that this evidence did not justify an intrusive body search.

Courts have approved strip searches for drugs when reasonable suspicion exists. In a 1974 case from New York,[45] school officials searched a student suspected of drug possession and found glassine envelopes containing heroin in his wallet. They strip-searched him for additional drugs. After deciding that the search was invalid from the start for lack of reasonable suspicion, the court commented on strip searches in general. In its view, if the grounds for the search had been adequate and drugs had been found in a preliminary search, a strip search would have been permissible to ensure that the student was not hiding other drugs.[46]

In another case decided before *T.L.O.*, still another federal appeals court approved a search in which a high school student suspected of possessing drugs had to remove only his jacket, boots, and shirt.[47] When the student was asked to remove his pants and refused, the school search was ended and the police were called. The court approved the search, finding that the school officials had reasonable suspicion. It did not say whether a more intrusive search, including removal of the student's trousers, would have been justified. The court added in passing, however, that body-cavity searches exceed the outer limits of reasonableness for school searches, even when the search is conducted to detect possession of "contraband in violation of school rules."[48]

Finally, in the first strip-search case reported since the Supreme Court's *T.L.O.* decision, a federal court in Michigan held that a search was "reasonable in scope" when an assistant principal searching for drugs required a 15-year-old to remove her jeans and bend over to reveal the contents of her brassiere while in the presence of two female school officials.[49]

Urinalysis

As drugs, weapons, and other contraband become more prevalent on school grounds and school systems take more drastic measures to combat these serious problems, the need for individualized suspicion will become an even more important issue in school searches. For example, in December 1985 the Detroit Board of Education voted to purchase 45 airport-style metal detectors for use in most of the city's high schools to combat a rising tide of serious assaults and murder in the schools. A federal judge temporarily enjoined the Detroit school system from using metal detectors or random pat-down searches, but later he upheld a new student code of conduct that provided for changes in the search techniques employed and gave the students notice that metal detectors would be used.[50]

Another increasingly common drug-detection search technique is urinalysis. Recently a New Jersey court held mass urinalysis testing of students to be unconstitutional.[51] The school system had tried to require all students to undergo this as part of a standard preadmission health examination. Despite the school system's assertions that the test was for health purposes and the results would not be used for any criminal prosecutions, the court enjoined the practice because of the lack of individualized suspicion.

---

44. Bilbrey v. Brown, 738 F.2d 1462 (9th Cir. 1984).

45. People v. Scott D., 34 N.Y.2d 483, 315 N.E.2d 466 (1974).

46. *See also* Bellnier v. Lund, 438 F. Supp. 47 (N.D.N.Y. 1977) (dicta that strip search would have been permissible if based on reasonable suspicion).

47. Tarter v. Raybuck, 742 F.2d 977 (6th Cir. 1984).

48. *Id.* at 982.

49. Cales v. Howell Pub. Schools, 635 F. Supp. 454 (E.D. Mich. 1985).

50. Doe v. Board of Educ., No. 85-4256 (E.D. Mich. 1985).

51. Odenheim v. Carlstadt-East Rutherford Regional School Dist., 510 A.2d 709 (N.J. Super. Ct. Ch. Div. 1985).

An Arkansas federal court also invalidated the use of urinalysis even where school officials had reasonable cause to believe that the particular students tested had recently used drugs.[52] The court found that the urinalysis test used could not distinguish when, within a three-week period, a person had used marijuana. For this reason the court concluded that the tests could not prove whether a student was under the influence of drugs while at school. Despite the individualized suspicion, the court held that the urinalysis tests could not provide an adequate basis for disciplining students. It also implied that probable cause would be required to justify urinalysis testing to prove drug use because of the physical intrusiveness of that procedure.

In 1986, a federal court in the District of Columbia struck down a urinalysis program involving all transportation department employees of the District's public school system.[53] Two years earlier the school system had adopted a program requiring all transportation employees to submit to urinalysis testing because of increased evidence of drug use among the employees. In a court hearing, the school system showed that the program was initiated because traffic accidents and absenteeism had increased and because syringes and bloody needles were found in transportation employees' restrooms. A bus attendant who was discharged after testing positive challenged her dismissal as being based on an unreasonable search. Applying a probable cause standard, the court held that the urinalysis did constitute a search. It went on to hold that the search violated the Fourth Amendment because of the lack of individualized suspicion.

To date no cases have been reported that involve drug testing of public school athletes, although this practice is becoming increasingly common.[54] Some courts have allowed drug testing in pre-employment or annual employee physicals, particularly with individuals in hazardous jobs.[55] But courts are increasingly invalidating random searches of employees if there is no reasonable suspicion that those tested are at present under the influence of a controlled substance.[56]

Applying these decisions by analogy to the school context, it appears that requiring urinalysis testing in pre-season physicals for student athletes might be upheld, particularly if it can be shown that the test is required for safety rather than for disciplinary reasons. On the other hand, random drug testing of athletes during the school year probably would not survive constitutional challenge.

Drug-Detecting Dogs

Much attention has been given to the use of trained dogs for detecting drugs in the schools. Dogs have been used for sniffing lockers, student cars, and even the students themselves. In *T.L.O.* the Supreme Court did not consider the propriety of using drug-detection dogs in school searches, but it did address this issue in an earlier case in which the police used sniffer dogs to inspect the luggage of a suspected drug smuggler.[57] Noting that the luggage was in a public place (an airport) and that sniffing the outside of luggage is minimally intrusive, the Court held that under these circumstances the sniff by the trained dog was not a search. Because it was not a search, the sniff was not governed by the Fourth Amendment, and reasonable suspicion was not required before the dogs could be used.

While instructive, this Supreme Court decision cannot be read to allow the use of detection dogs in all cases. The federal courts that have addressed the issue differ on whether to distinguish between use of narcotics-detection dogs in searches of inanimate objects like lockers and their use in searches of students.

In an early case an Indiana school board, responding to reports of drug abuse in its schools, authorized the use of drug-detecting dogs in a general search of 2,780 junior and senior high school students.[58] The search was conducted by police officers and trained dog handlers who agreed before the search that no criminal charges would result. The entire search lasted three hours. By the end, the dogs had "alerted" to fifty students. These students were asked to empty their pockets or purses. The dogs continued to alert to eleven of these students; of these eleven, five high school students were subjected to thorough, clothed-body searches and four junior high girls were strip-searched. None of the body searches disclosed evidence of drugs.

---

52. Anable v. Ford, No. 84-6033, slip op. (W.D. Ark. July 12, 1985).

53. Jones v. McKenzie, 628 F. Supp. 1500 (D.D.C. 1986).

54. Zirkel and Kilcoyne, *Drug Testing of Public School Employees or Students*, 37 Ed. L. Rptr. 1029, 1030, n.16 (1987).

55. *Id.*; Allen v. City of Marietta, 601 F. Supp. 482 (N.D. Ga. 1985); McDowell v. Hunter, 612 F. Supp. 1122 (D.C. Iowa 1985); City of Palm Bay v. Bauman, 475 So.2d 1322 (Fla. Dist. Ct. App. 1985).

56. 475 So.2d at 1325 (court finds random urinalysis of police and fire fighters invalid, but implies mandatory testing as part of annual physical examination permissible); Allen v. County of Passaic, No. L-19262-86 PW (N.J. Super. Ct. Law Div., June 23, 1986).

57. United States v. Place, 402 U.S. 696 (1983).

58. Doe v. Renfrow, 475 F. Supp. 1012 (N.D. Ind. 1979), *aff'd*, 631 F.2d 91, *rehearing denied*, 635 F.2d 582 (7th Cir. 1980), *cert. denied*, 451 U.S. 1022 (1981).

The plaintiff in this case, a thirteen-year-old girl, was one of the junior high students who was "nude" searched after the dog's repeated alerting. Some time later, the reason for the canine's persistence became obvious—on the morning of the inspection, the plaintiff had been playing with her dog, which was in heat.

The court found that the general inspection of the school for drugs and the dog sniffs of each student were reasonable in light of the school's in loco parentis responsibilities. Relying on related criminal cases, the court upheld the sniffing by a trained narcotic-detecting canine. Its rationale was that a "sniff" is not a search and the dogs are merely an aid to school administrators in detecting the scent of marijuana. The court held that the same reasonableness test applied to the search of objects and to the search of persons, and that the students did not have an expectation of privacy that would preclude a school administrator from using drug-detecting dogs to sniff the areas around school desks. As the court said, "[A] public school student cannot be said to enjoy any absolute expectation of privacy while in the classroom setting."[59]

The court acknowledged that in many criminal cases, the law enforcement officers had independent information or "tips" concerning the whereabouts of drugs later sniffed out by the dogs. But it found that the extensive list of drug incidents in the school (thirteen within the twenty days before the dogs were used), the evidence that students were refusing to speak for fear of reprisals, and the administrators' frustration in dealing with the problem constituted independent evidence indicating drug abuse within the school that justified the searches conducted.

The court held that the use of dogs to detect drug possession generally was permissible even when there was no basis to suspect any individual student; school officials may rely on "general information" to justify use of the canines to detect narcotics. Hence the combined "independent evidence" and the "alert" by a reliable dog sufficiently sustained the administrative search of the students' pockets and possessions. The court held only the "strip search" of students to be unreasonable, on the theory that the dog's alert alone did not provide sufficient cause when the search involved so severe an intrusion.

The federal circuit court of appeals affirmed the decision. The plaintiff then sought a rehearing by the circuit court; although the rehearing was denied, four of the judges dissented. One judge appeared to speak for all four in criticizing the decision to uphold the validity of a blanket search. His dissent was unyielding: "No doctrine of *in loco parentis* or diminished constitutional rights for children in a public school setting excuses this alarming invasion by police and school authorities of the constitutional rights of thousands of innocent children."[60] The judge further argued that the intrusive probings by the dogs unquestionably amounted to a search governed by Fourth Amendment protections.

The case was finally appealed to the Supreme Court in 1981. The Court declined to hear the case, but not without dissent.[61] Justice Brennan strongly objected to the "dragnet inspection" conducted. While recognizing the school's responsibility to maintain a "safe and healthful environment," he concluded that "[t]he problem of drug abuse in the schools is not to be solved by conducting schoolhouse raids on unsuspecting students absent particularized information regarding drug users or suppliers."[62] Justice Brennan agreed with the dissenters on the court of appeals that the use of drug-detecting dogs did constitute a search. He further argued that once the police became active participants in the drug raid, their actions and those of the school officials should be judged by probable cause standards.

In 1982 a federal appeals court held in a similar Texas case[63] that the use of canines to sniff the exteriors of lockers and automobiles was not a search, but it did not extend this rationale to the sniffing of students. Instead, the court said that a sniff of students is a search that must be supported by individualized suspicion.

In this case, two students triggered alerts by drug-detection dogs. School officials questioned one student, took her purse, and searched it without her consent. They discovered no contraband. The other student was asked to empty his pockets, which he did. When they found nothing, the school officials searched his socks and lower pant legs but again found nothing.

The court concluded that the sniffing of objects by dogs is not a search, but found the sniffing of students themselves to be a search that requires Fourth Amendment protection. Under the theory that dogs merely enhance human perceptual abilities, the court concluded that the sniffing

59. *Id.* at 1022.

60. 635 F.2d at 582.

61. Doe v. Renfrow, 451 U.S. 1022 (1981).

62. *Id.*

63. Horton v. Goose Creek Indep. School Dist., 690 F.2d 470 (5th Cir. 1982), *withdrawing opinion*, 677 F.2d 471 (5th Cir. 1982), *rehearing denied*, 693 F.2d 524 (5th Cir. 1982), *cert. denied*, 463 U.S. 1207 (1983).

of lockers and cars was not a search. But it held that the sniff of the students was a search because a student retains a reasonable expectation of privacy in his person that is violated by the dog's putting its nose on the person while sniffing as well as manifesting other signs of excitement in the case of alert.

Because the law in this area is uncertain and some parents will likely object to having their children sniffed by a drug-detection dog, school officials would be wise to follow the more conservative analysis: General dog searches of inanimate objects are permissible; general searches of students are not. A dog may be used to sniff a student when there is reasonable suspicion of the individual student.

Police Involvement

The involvement of the police in school investigations is an important factor considered by the courts in judging the reasonableness of searches. When the school initiates a search and the police are not involved until contraband has been seized, courts readily uphold the search under the reasonable suspicion standard.[64] In fact, some courts have upheld searches based on reasonable suspicion even when police are involved if the purpose of the search is clearly to enforce school disciplinary rules rather than to ferret out criminal evidence.[65]

But when the police use the fruits of school searches in criminal prosecutions, the lower courts are increasingly reluctant to validate the search. At one time, the courts applied the lesser reasonable suspicion standard to school-initiated searches conducted with police assistance, in effect bringing the police under the school's umbrella.[66] More recently they have held that such circumstances require the stricter probable cause standard.[67]

A case before a federal court in Illinois illustrates the stricter judicial scrutiny applied when police are involved in school searches.[68] A principal received a telephone tip that three female students possessed marijuana on school premises. On instructions from the school superintendent, he summoned the police. After the police arrived, school personnel searched the girls. In finding the search illegal, the court recognized the school's legitimate interest in the safety of the defendants and other students whom they might influence, but it cautioned that "all [the school] can do in furtherance of that interest is to locate and perhaps confiscate the drugs."[69] When the school called in the police, the purpose of the search was arguably expanded to discovering evidence of a crime, not merely to enforcing school rules. Under these circumstances, the court held, the probable cause standard must be met.

The secondary involvement of the police was allowed in a recent federal court decision.[70] In this case the principal called a student to the office after receiving an anonymous phoned report that he kept drug paraphernalia in the lining of his coat. The boy declined a search until his parents were present. When the parents could not be reached, the principal asked a police officer, who was at school for another reason, to speak to the student. The student then emptied his pockets and surrendered a pipe that contained marijuana residue.

The court held that the school's action was not a "subterfuge to avoid warrant and probable cause requirements," given the fact that there was no criminal investigation under way. The search was not a prearranged joint effort of the police and school officials, and the student would likely have been eventually searched even without police assistance.[71]

In 1977 the Washington State Supreme Court went further and upheld a search that was a cooperative effort between the police and school officials.[72] In this case the police received an anonymous tip from an informant that certain students were selling amphetamines. The police conveyed the information to the school principal, who conducted a search that produced the identified drugs. The students later were convicted for possession of a controlled substance. Finding the search lawful, since "the school official [had] reasonable grounds to believe the search [was] necessary in the aid of maintaining school discipline and order,"[73] the court upheld the conviction.

To a claim that the police and the school principal acted jointly, the majority of the court responded that it found no evidence that the police chief directed or encouraged the principal to conduct a search. But one of the court's brethren was not so easily convinced. In a biting dissent,

---

64. Tarter v. Rayback, 556 F. Supp. 625 (N.D. Ohio 1983), *aff'd in part, rev'd in part*, 742 F.2d 977 (6th Cir. 1984).

65. Zamora v. Pomeroy, 639 F.2d 662 (10th Cir. 1981).

66. *See, e.g., In re* C., 26 Cal. App. 3d 320, 102 Cal. Rptr. 682 (1972); *In re* Boykin, 39 Ill. 2d 617, 237 N.E.2d 460 (1968).

67. Picha v. Wielgos, 410 F. Supp. 1214 (N.D. Ill. 1976).

68. *Id.*

69. *Id.* at 1220-21.

70. Martens v. Dist. No. 220, 620 F. Supp. 29 (N.D. Ill. 1985).

71. *Id.*

72. State v. McKinnon, 88 Wash. 2d 75, 558 P.2d 781 (1977).

73. *Id.* at 81, 558 P.2d at 784.

he argued that the school official "acted in conjunction with and as an agent of the police" and that under the circumstances the search should be governed by the probable cause standard.[74]

The facts of this case are rather unusual. In most of the cases reported, the police have not directly enlisted the school's help to apprehend suspected criminals when they would not have sufficient grounds to do so on their own. Such a practice would clearly subvert the Supreme Court requirement that police searches be based on probable cause.

A final issue related to police involvement in school searches is whether searches by security guards hired by a school system should be governed by the probable cause standard applicable to police searches. The limited amount of case law suggests that courts will treat school security officers like other school officials and apply the reasonable suspicion standard. Thus a California court scrutinized a search by a "security officer" under the reasonable suspicion standard even though the officer was specifically authorized by state law to prevent violations of the law and ensure the safety of students and faculty.[75]

Exclusionary Rule

In *T.L.O.*, the Supreme Court ruled that the student search at issue was based on reasonable suspicion and therefore satisfied the Fourth Amendment. Because the search was upheld, the Court did not reach the question for which it had originally agreed to hear the case: the admissibility in a criminal proceeding of evidence seized during an illegal search by school officials—that is, whether the exclusionary rule applies. A closely related issue is whether such evidence is admissible in a school disciplinary hearing. The exclusionary rule provides that evidence obtained through an illegal search or seizure may not be used in a court proceeding.

Admissibility in Criminal Proceedings

Although the Supreme Court did not reach the exclusionary rule issue in *T.L.O.*, the New Jersey Supreme Court found that this rule does apply to exclude evidence obtained in illegal searches by school officials from criminal proceedings,[76] as have the vast majority of other courts that have considered the matter.[77]

In finding that the exclusionary rule applies in judicial proceedings to the fruits of illegal school searches, these courts have reasoned that school officials are public officials and thus are subject to the Constitution's limitations on government action. Because a search by a school official constitutes "state action," it is subject to scrutiny under the Fourth Amendment; and, these courts conclude, the fruits of an illegal search are inadmissible under application of the exclusionary rule.

A few courts have analyzed the purpose of the exclusionary rule before applying it in criminal proceedings to searches in the school context. An Illinois court[78] found that the exclusionary rule would deter school officials from violating students' constitutional rights just as it deters police officers from conducting illegal searches.

A court in New York reasoned that the purpose of searches by school officials is to protect other students from the harmful effects of the contraband possessed by the student searched and not to secure criminal convictions.[79] Thus excluding evidence of an illegal search in a later criminal proceeding would not interfere with school officials' ability to confiscate the contraband. The court also noted that the consequences to the student of an illegal search are just as severe at the criminal proceeding whether the evidence was originally seized by a police officer in order to secure a conviction or by a school official for another purpose.[80]

A few courts have held that the exclusionary rule does not apply in criminal proceedings when the search was conducted by school officials.[81] They have concluded that

74. *Id.* at 83, 558 P.2d at 785.

75. *In re* Robert B., 172 Cal. App.3d 763, 218 Cal. Rptr. 337 (1985). *Accord*, Speake v. Grantham, 317 F. Supp. 1253 (S.D. Miss. 1970), *affd.* 440 F.2d 1351 (5th Cir. 1971) (search on college campus).

76. State *ex rel. T.L.O.*, 94 N.J. 331, 463 A.2d 934 (1983).

77. State v. Baccino, 282 A.2d 869 (Del. Super. 1971); State v. Walker, 19 Or. App. 420, 528 P.2d 113 (1974); People v. Scott D., 34 N.Y.2d 483, 315 N.E.2d 466 (1974); State v. Mora, 307 So.2d 317 (La. 1975); L.L. v. Circuit Court of Washington County, 90 Wis. 2d 585, 280 N.W.2d 343 (1979); *In re* J.A., 85 Ill. App.3d 567, 406 N.E.2d 958 (1980); *In re* Dominic W., 48 Md. App. 236, 426 A.2d 432 (1981); *In re* Bobby B., 172 Cal. App. 3d 377, 218 Cal. Rptr. 253 (Cal. App. 1985); *In re* Robert B., 172 Cal. App. 3d 363, 218 Cal. Rptr. 337 (1985). One state court has even applied the exclusionary rule to searches by officials of private colleges. People v. Haskins, 48 A.D.2d 480, 369 N.Y.S.2d 869 (1975).

78. *In re* J.A., 85 Ill. App. 3d 567, 406 N.E.2d 958 (1980).

79. People v. Scott D., 34 N.Y.2d 483, 315 N.E.2d 466 (1974).

80. *Id.* at 488, 315 N.E.2d at 469.

81. State v. Young, 234 Ga. 488, 216 S.E.2d 586, *cert. denied*, 423 U.S. 1039, 96 S.Ct. 576, 46 L.Ed.2d 413 (1975); R.C.M. v. State, 660 S.W.2d 552 (Tex. App. 1983).

school officials are more like private individuals or parents than law enforcement officers and therefore the Fourth Amendment does not apply to searches by them. This reasoning is questionable, however, given the Supreme Court's holding in *T.L.O.* that actions of school officials are actions of the state that are subject to scrutiny under the Fourth Amendment.

Two additional theories expressed by a Georgia court as bases for not applying the exclusionary rule retain vitality even after *T.L.O.* In 1975[82] the Georgia Supreme Court reasoned that the exclusionary rule is not mandated by the Fourth Amendment but is merely a judicially created remedy to deter improper actions by law enforcement officials. The court also noted that students subject to illegal searches can bring tort actions to remedy violations of their constitutional rights.[83] It considered this potential civil liability to be sufficient to deter illegal searches by school officials.

Does the Rule Apply to School Disciplinary Proceedings?

Courts are more evenly divided on whether the exclusionary rule applies to school disciplinary proceedings. This split of authority derives primarily from the different ways in which courts have viewed these hearings. Although a school disciplinary hearing is far from a full-blown criminal action, it is a proceeding in which significant penalties may be assessed.

A federal district court in Texas held that the exclusionary rule applies to school disciplinary proceedings, noting that the United States Supreme Court has applied the rule to civil as well as criminal proceedings.[84] The court held that the exclusionary rule would have the intended deterrent effect if applied to the school disciplinary hearings as well, and it reasoned that civil suits would not sufficiently deter illegal searches. Finally, the court found that it would be anomalous for school officials to be any less subject than law enforcement personnel to an effective remedy for unconstitutional searches in light of their status as educators and role models.

In 1975 another federal court ruled that the exclusionary rule applies to disciplinary proceedings in public colleges.[85] Besides noting the deterrent effect of the exclusionary rule and its role in preserving the legitimacy and integrity of the government as a rule enforcer, the court emphasized that the punishment meted out at a disciplinary hearing often is more severe than would be imposed if the matter were handled in a criminal court.

More recently the California Court of Appeals held that the exclusionary rule does not apply to school disciplinary proceedings.[86] In reaching this conclusion, the court was influenced by recent California cases holding that in other quasi-criminal proceedings, such as state bar disciplinary proceedings and parole-revocation hearings, the exclusionary rule does not apply. In balancing the competing interests involved in the school setting, the court concluded that the social cost in harm to other students from the presence of contraband and the damage to morale of students, teachers, and administrators outweigh the value of any possible deterrent effect from employing the exclusionary rule.

The California court added two important caveats to its basic decision. First, it distinguished searches in primary and secondary schools from searches in the college setting, suggesting that college students' privacy needs are greater because they reside on campus.[87] Second, the court stated that a different conclusion concerning the applicability of the exclusionary rule may be in order in a case involving an egregious violation of the Fourth Amendment.

Will the Supreme Court Apply the Rule?

The Supreme Court appears to be sharply divided on whether the exclusionary rule should apply to school searches. Although the Court did not reach the issue in *T.L.O.*, the majority noted that the New Jersey Supreme Court declined considering "whether applying the rule to the fruits of searches by school officials would have any deterrent value."[88] The three dissenting justices indicated that they would find the exclusionary rule to apply, at least when the search resulted in a criminal trial or adjudication of delinquency. Justice Stevens, speaking for the dis-

82 State v. Young, 234 Ga. 488, 216 S.E.2d 586, *cert. denied*, 423 U.S. 1039 (1975), *id.*, 234 Ga. at 491, 216 S.E.2d at 589-90, *citing* United States v. Calandra, 414 U.S. 338 (1974).

83 A tort is a civil wrong other than breach of contract for which a court will provide relief to the victim in the form of monetary compensation.

84 Jones v. Latexo Indep. School Dist., 499 F. Supp. 223 (E.D. Tex. 1980).

85 Smyth v. Lubbers, 398 F. Supp. 777 (W.D. Mich. 1975).

86 Gordon J. v. Santa Ana Unified School Dist., 162 Cal. App. 3d 530, 208 Cal. Rptr. 657 (1984).

87 *Id.* at 542, n.6, 208 Cal. Rptr. at 665, n.6.

88 469 U.S. at 330, 105 S.Ct. at 738, 83 L.Ed.2d at 727.

senters, reasoned that when a defendant is subject to an illegal search by a school administrator,

> [T]he application of the exclusionary rule is a simple corollary of the principle that "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court". . . . Schools are places where we inculcate the values essential to the meaningful exercise of rights and responsibilities by a self-governing citizenry. If the Nation's citizens can be convicted through the use of arbitrary methods destructive of personal liberty, they cannot help but feel that they have been dealt with unfairly. The application of the exclusionary rule in criminal proceedings arising from illegal school searches makes an important statement to young people that "our society attaches serious consequences to a violation of constitutional rights" and that this is a principle of liberty and justice for all.[89]

Other Supreme Court rulings concerning the exclusionary rule do not provide any clear guidance on how the Court ultimately might resolve this issue. The weight of lower court authority favors a finding that the exclusionary rule applies to the fruits of school searches offered in judicial proceedings. The purposes of the rule as enunciated by the Supreme Court—to deter illegal invasions of privacy and to avoid convictions based on illegally obtained evidence—apply with equal force to searches in the school setting.[90] In addition, an argument can be made on the basis of Supreme Court precedent that the exclusionary rule applies to school disciplinary proceedings. The Court already has made clear that the exclusionary rule is not restricted in its application only to full-blown criminal trials.[91] On the other hand, the Court's current trend is to find exceptions to the applicability of the rule.[92]

In light of the Supreme Court's ruling in *T.L.O.* that the Fourth Amendment applies to searches by school officials, it may well be that the Court ultimately will apply the exclusionary rule in criminal proceedings resulting from school searches. A different approach to school disciplinary proceedings easily could be justified. Given the Court's recent willingness to question the usefulness of the exclusionary rule, it might conclude that the need to safeguard other students justifies the admissibility of illegally obtained evidence in school disciplinary hearings.

Conclusion

Although the Supreme Court has answered the important question concerning the constitutional requirements for searches of students by school officials in the public school setting, many issues remain unresolved. Strong arguments can be marshaled on both sides of many of these open questions. While the presence of drugs, weapons and other contraband in the schools clearly pose difficult challenges to school administrators and teachers, school officials who undertake a search would be well advised to proceed with caution, particularly with regard to strip searches, mass searches, and dogs to sniff students.

In the many areas where questions remain, school officials who initiate a search might well heed Supreme Court Justice Brennan: '[O]fficials who may harbor doubts about the lawfulness of their intended actions [should] err on the side of protecting citizens' . . . rights."[93] ■

89. *Id.* at 372-74, 83 L.Ed.2d at 755-56.

90. *See also* Michigan v. Tyler, 436 U.S. 499 (1978) (exclusionary rule applies to illegal search by fire officials).

91. One 1958 Plymouth Sedan, 380 U.S. 693 (1965) (exclusionary rule applicable to "quasi-criminal" forfeiture proceedings).

92. Walter v. United States, 347 U.S. 62 (1954) (exclusionary rule inapplicable to use of evidence to impeach defendant); United States v. Calandra, 414 U.S. 338 (1974) (exclusionary rule inapplicable to grand jury proceedings); United States v. Janis, 428 U.S. 433 (1976) (exclusionary rule inapplicable to federal civil tax delinquency proceedings); INS v. Lopez-Mendoza, 468 U.S. 1032 (1984) (exclusionary rule inapplicable to deportation proceedings).

93. Owen v. City of Independence, 445 U.S. 622, 652, *rehearing denied*, 446 U.S. 993 (1980).

Sec.
90-113.6. Payments and advances.
90-113.7. Pending proceedings.
90-113.8. Continuation of regulations.

Article 5A.

North Carolina Toxic Vapors Act.

90-113.8A. Title.
90-113.9. Definitions.
90-113.10. Inhaling fumes for purpose of causing intoxication.
90-113.11. Possession of substances.
90-113.12. Sale of substance.
90-113.13. Violation a misdemeanor.
Sec.
90-113.14. Conditional discharge and expunction of records for first offenses.

Article 5B.

Drug Paraphernalia.

90-113.20. Title.
90-113.21. General provisions.
90-113.22. Possession of drug paraphernalia.
90-113.23. Manufacture or delivery of drug paraphernalia.
90-113.24. Advertisement of drug paraphernalia.

ARTICLE 5.

North Carolina Controlled Substances Act.

§ 90-86. Title of Article.

This Article shall be known and may be cited as the "North Carolina Controlled Substances Act." (1971, c. 919, s. 1.)

Cross References. — As to enforcement of this Article by alcohol law enforcement agents and local ABC officers, see §§ 18B-500, and 18B-501.

Legal Periodicals. — For survey of 1976 case law on criminal law, see 55 N.C.L. Rev. 976 (1977).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Indictment for Sale of Narcotics to Allege Name of Purchaser. — In a count charging the sale of narcotics, the indictment must allege the name of the purchaser. State v. Martindale, 15 N.C. App. 216, 189 S.E.2d 549 (1972).

Applied in State v. Turnbull, 16 N.C. App. 542, 192 S.E.2d 689 (1972); State v. McCuien, 17 N.C. App. 109, 193 S.E.2d 349 (1972).

Cited in State v. McIntyre, 281 N.C. 304, 188 S.E.2d 304 (1972); State v. Foye, 14 N.C. App. 200, 188 S.E.2d 67 (1972); State v. Wood, 17 N.C. App. 352, 194 S.E.2d 205 (1973).

§ 90-87. Definitions.

As used in this Article:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject by:

a. A practitioner (or, in his presence, by his authorized agent), or

b. The patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser but does not include a common or contract carrier, public warehouseman, or employee thereof.

(3) "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice or its successor agency.

(3a) "Commission" means the Commission for Mental Health, Mental Retardation and Substance Abuse Services established under Part 4 of Article 3 of Chapter 143B of the General Statutes.

(4) "Control" means to add, remove, or change the placement of a drug, substance, or immediate precursor included in Schedules I through VI of this Article.

(5) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through VI of this Article.

(6) "Counterfeit controlled substance" means:

a. A controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports, or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser; or

b. Any substance which is by any means intentionally represented as a controlled substance. It is evidence that the substance has been intentionally misrepresented as a controlled substance if the following factors are established:

1. The substance was packaged or delivered in a manner normally used for the illegal delivery of controlled substances.
2. Money or other valuable property has been exchanged or requested for the substance, and the amount of that consideration was substantially in excess of the reasonable value of the substance.
3. The physical appearance of the tablets, capsules or other finished product containing the substance is substantially identical to a specified controlled substance.

(7) "Deliver" or "delivery" means the actual constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(8) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(9) "Dispenser" means a practitioner who dispenses.

(10) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(11) "Distributor" means a person who distributes.

(12) "Drug" means (i) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (ii) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (iii) substances (other than food) intended to affect the structure or any function of the body of man or other animals; and (iv) substances intended for use as a component of any article specified in (i), (ii), or (iii) of this subdivision; but does not include devices or their components, parts, or accessories.

(13) "Drug dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence, or

both, arising from use of that controlled substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

(14) "Immediate precursor" means a substance which the Commission has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture.

(14a) The term "isomer" means, except as used in G.S. 90-89(c), the optical isomer. As used in G.S. 90-89(c) the term "isomer" means the optical, position, or geometric isomer.

(15) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance by any means, whether directly or indirectly, artificially or naturally, or by extraction from substances of a natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; and "manufacture" further includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

a. By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

b. By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to research, teaching, or chemical analysis and not for sale.

(16) "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause a, but not including the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(18) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under G.S. 90-88, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(19) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(20) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(21) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(22) "Practitioner" means:

a. A physician, dentist, optometrist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance so long as such activity is within the normal course of professional practice or research in this State.

b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance so long as such activity is within the normal course of professional practice or research in this State.

(23) "Prescription" means:

a. A written order or other order which is promptly reduced to writing for a controlled substance as defined in this Article, or for a preparation, combination, or mixture thereof, issued by a practitioner who is licensed in this State to administer or prescribe drugs in the course of his professional practice; or issued by a practitioner serving on active duty with the armed forces of the United States or the United States Veterans Administration who is licensed in this or another state or Puerto Rico, provided the order is written for the benefit of eligible beneficiaries of armed services medical care; a prescription does not include an order entered in a chart or other medical record of a patient by a practitioner for the administration of a drug; or

b. A drug or preparation, or combination, or mixture thereof furnished pursuant to a prescription order.

(24) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(25) "Registrant" means a person registered by the Commission to manufacture, distribute, or dispense any controlled substance as required by this Article.

(26) "State" means the State of North Carolina.

(27) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use, or for the use of a member of his household, or for administration to an animal owned by him or by a member of his household. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 540, ss. 2-4; c. 1358, ss. 1, 15; 1977, c. 482, s. 6; 1981, c. 51, ss. 8, 9; c. 75, s. 1; c. 732.)

Effect of Amendments. — Session Laws 1981, c. 51, s. 8, effective July 1, 1981, added subdivision (3a).

Session Laws 1981, c. 51, s. 9, effective July 1, 1981, purported to substitute "Commission" for "North Carolina Drug Commission" in subdivisions (14) and (25) of this section. Those subdivisions actually contained the phrase "North Carolina Drug Authority." However, "Commission" has been substituted for "North Carolina Drug Authority" in subdivisions (14) and (25) as set out above, in order to give effect to the obvious intent of the 1981 act.

Session Laws 1981, c. 75, s. 1, inserted the language beginning "or issued by" and ending "armed services medical care" near the middle of subdivision (23)a.

Session Laws 1981, c. 732, effective Oct. 1, 1981, inserted "controlled" in the phrase defined by subdivision (6), designated the original definition in subdivision (6) as paragraph a and added paragraph b in subdivision (6).

Legal Periodicals. — For survey of 1979 criminal law, see 58 N.C.L. Rev. 1350 (1980).

CASE NOTES

I. General Consideration.
II. "Deliver" or "Delivery."
III. "Manufacture."
IV. "Marijuana."
V. "Practitioner."
VI. "Prescription."

I. GENERAL CONSIDERATION.

Quoted in State v. Aiken, 286 N.C. 202, 209 S.E.2d 763 (1974); State v. Childers, 41 N.C. App. 729, 255 S.E.2d 654 (1979).

Stated in State v. Phillips, 15 N.C. App. 597, 190 S.E.2d 433 (1972); State v. Bell, 33 N.C. App. 607, 235 S.E.2d 886 (1977); State v. Shufford, 34 N.C. App. 115, 237 S.E.2d 481 (1977).

Cited in State v. Newton, 21 N.C. App. 384, 204 S.E.2d 724 (1974).

II. "DELIVER" OR "DELIVERY."

"Delivery" Means "Transfer". — In a prosecution for felonious sale and delivery of marijuana, and felonious possession of marijuana with intent to sell, trial judge's charge to the jury placing the burden on the State to prove that defendant "transferred" the marijuana was not prejudicial error, since "delivery" means "transfer" under this section. State v. Dietz, 289 N.C. 488, 223 S.E.2d 357 (1976).

III. "MANUFACTURE."

The plain meaning of the exception in subdivision (15) which excepts "preparation or compounding of a controlled substance by an individual for his own use," is to avoid making an individual liable for the felony of manufacturing controlled substance in the situation where, being already in possession of a controlled substance, he makes it ready for use (i.e., rolling marijuana into cigarettes for smoking) or combines it with other ingredients for use (i.e., making the so-called "Alice B. Toklas" brownies containing marijuana). State v. Childers, 41 N.C. App. 729, 255 S.E.2d 654, cert. denied, 298 N.C. 302, 259 S.E.2d 916 (1979).

Evidence Sufficient to Show Manufacture of Marijuana. — Evidence was sufficient to withstand a motion for judgment as of nonsuit on a charge of manufacture of marijuana where stripped stalks of marijuana were found growing behind a television antenna connected to the defendant's residence and marijuana plants were found growing in flower pots

on a table in the defendant's yard 32 feet from his residence. State v. Wiggins, 33 N.C. App. 291, 235 S.E.2d 265, cert. denied, 293 N.C. 592, 241 S.E.2d 513 (1977).

IV. "MARIJUANA."

The exception in subdivision (16) relating to sterilized seeds implies an affirmative act by which presumptively vital seeds are rendered sterile, rather the naturally occurring sterile seeds resulting from a lack of fertilization by pollination. State v. Childers, 41 N.C. App. 729, 255 S.E.2d 654, cert. denied, 298 N.C. 302, 259 S.E.2d 916 (1979).

State Entitled to Assume Marijuana Seeds Are Vital. — Where the defendant does not make any showing as to the fertility of the marijuana seeds, and offers no proof that they were in any different state from that in which they naturally occurred, the State is entitled to assume that the seeds are vital and to proceed upon that assumption until the contrary is shown by defendant's evidence. State v. Childers, 41 N.C. App. 729, 255 S.E.2d 654, cert. denied, 298 N.C. 302, 259 S.E.2d 916 (1979).

V. "PRACTITIONER."

The term "within the normal course of professional practice" in subdivision (22)a is not vague. It gives every practitioner fair notice of the standard he must follow if his conduct is to come within the exception of the statute. That is all the Constitution requires. State v. Best, 31 N.C. App. 250, 229 S.E.2d 581 (1976), rev'd on other grounds, 292 N.C. 294, 233 S.E.2d 544 (1977).

VI. "PRESCRIPTION."

The clause "who is licensed ... to ... prescribe drugs in the course of his professional practice" in subdivision (23)a is an adjective clause modifying the preceding noun "practitioner." It describes the one issuing the prescription. It does not change the definition of practitioner as given in subdivision (22)a. State v. Best, 31 N.C. App. 250, 229 S.E.2d 581 (1976), rev'd on other grounds, 292 N.C. 294, 233 S.E.2d 544 (1977).

Thus a practitioner who is licensed to issue a prescription in the course of "his" professional practice may not do so unless that "activity is within the normal course of professional practice." State v. Best, 31 N.C. App. 250, 229 S.E.2d 581 (1976), rev'd on other grounds, 292 N.C. 294, 233 S.E.2d 544 (1977).

§ 90-88. Authority to control.

(a) The Commission may add, delete, or reschedule substances within Schedules I through VI of this Article on the petition of any interested party, or its own motion. In every case the Commission shall give notice of and hold a public hearing prior to adding, deleting or rescheduling a controlled substance within Schedules I through VI of this Article. A petition by the Commission, the North Carolina Department of Justice, or the North Carolina Board of Pharmacy to add, delete, or reschedule a controlled substance within Schedules I through VI of this Article shall be placed on the agenda, for consideration, at the next regularly scheduled meeting of the Commission, as a matter of right. Notice as required by this section shall consist of notice by one publication in three newspapers of statewide circulation qualified for legal advertising in accordance with G.S. 1-597 and 1-598. In addition, the North Carolina Department of Human Resources shall mail a notice of the proposed change and the date and place of the public hearing to each registrant under this Article. In making a determination regarding a substance, the Commission shall consider the following:

(1) The actual or relative potential for abuse;
(2) The scientific evidence of its pharmacological effect, if known;
(3) The state of current scientific knowledge regarding the substance;
(4) The history and current pattern of abuse;
(5) The scope, duration, and significance of abuse;
(6) The risk to the public health;

(7) The potential of the substance to produce psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this Article.

(b) After considering the required factors, the Commission shall make findings with respect thereto and shall issue an order adding, deleting or rescheduling the substance within Schedules I through VI of this Article.

(c) If the Commission designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal law, the Commission shall similarly control, or cease control of, the substance under this Article after the expiration of 30 days from publication in the Federal Register of a final order designating a substance as a controlled substance unless, within 180 days, the Commission objects to such inclusion. In such case, the Commission shall cause to be published and made public the reason for such objection and shall afford all interested parties an opportunity to be heard. At the conclusion of such meeting, the Commission shall make public its decision, which shall be final unless specifically acted upon by the North Carolina General Assembly. Upon publication of objection to inclusion under this Article by the Commission, control under this section shall automatically be stayed until such time as the Commission makes public its decision.

(e) The Commission shall exclude any nonnarcotic substance from the provisions of this Article if such substance may, under the federal Food, Drug and Cosmetic Act, lawfully be sold over-the-counter without prescription.

(f) Authority to control under this Article does not include distilled spirits, wine, malt beverages, or tobacco.

(g) The Commission shall similarly exempt from the provisions of this Article any chemical agents and diagnostic reagents not intended for administration to humans or other animals, containing controlled substances which either (i) contain additional adulterant or denaturing agents so that the resulting mixture has no significant abuse potential, or (ii) are packaged in such a form or concentration that the particular form as packaged has no significant abuse potential, where such substance was exempted by the Federal Bureau of Narcotics and Dangerous Drugs.

(h) When any substance is designated, rescheduled or deleted as a controlled substance pursuant to this section, the North Carolina Department of Human Resources shall mail a notice of this change to each registrant, to the State Bureau of Investigation, North Carolina Board of Pharmacy and to each district attorney within 30 days of this change.

(i) The North Carolina Department of Human Resources shall maintain a list of all preparations, compounds, or mixtures which are excluded, exempted and excepted from control under any schedule of this Article by the United States Drug Enforcement Administration and/or the Commission. This list and any changes to this list shall be mailed to the North Carolina Board of Pharmacy, the State Bureau of Investigation and each district attorney of this State. (1971, c. 919, s. 1; 1973, c. 476, s. 128; cc. 524, 541; c. 1358, ss. 2, 3, 15; 1977, c. 667, s. 3; 1981 c. 51, s. 9.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "North Carolina Drug Commission" throughout the section.

CASE NOTES

This section is constitutional. State v. Lisk, 21 N.C. App. 474, 204 S.E.2d 868, cert. denied, 285 N.C. 666, 207 S.E.2d 759 (1974).

This section does not delegate the authority to define crimes; rather it is a delegation of authority to find facts or determine the existence or nonexistence of a factual situation or condition on which the operation of a law is made to depend. State v. Lisk, 21 N.C. App. 474, 204 S.E.2d 868, cert. denied, 285 N.C. 666, 207 S.E.2d 759 (1974).

An examination of this section reveals that the legislature has imposed guidelines upon the rescheduling of controlled substances that are more than adequate. State v. Lisk, 21 N.C. App. 474, 204 S.E.2d 868, cert. denied, 285 N.C. 666, 207 S.E.2d 759 (1974).

Applied in McLawhorn v. North Carolina, 484 F.2d 1 (4th Cir. 1973); State v. Wooten, 20 N.C. App. 499, 201 S.E.2d 696 (1974); State v. Baxter, 21 N.C. App. 81, 203 S.E.2d 93 (1974); State v. Newton, 21 N.C. App. 384, 204 S.E.2d 724 (1974).

Quoted in State v. Crews, 286 N.C. 41, 209 S.E.2d 462 (1974).

Stated in State v. Dietz, 289 N.C. 488, 223 S.E.2d 357 (1976).

Cited in State v. Aikens, 22 N.C. App. 310, 206 S.E.2d 348 (1974); State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977).

§ 90-89. Schedule I controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse, no currently accepted medical use in the United States, or a lack of accepted safety for use in treatment under medical supervision. The following controlled substances are included in this schedule:

(a) Any of the following opiates, including the isomers, esters, ethers, salts and salts of isomers, esters, and ethers, unless specifically excepted, or listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetylmethadol.
2. Allylprodine.
3. Alphacetylmethadol.
4. Alphameprodine.
5. Alphamethadol.
6. Benzethidine.
7. Betacetylmethadol.
8. Betameprodine.
9. Betamethadol.
10. Betaprodine.
11. Clonitazene.
12. Dextromoramide.
13. Diampromide.
14. Diethylthiambutene.
15. Difenoxin.
16. Dimenoxadol.
17. Dimepheptanol.
18. Dimethylthiambutene.
19. Dioxaphetyl butyrate.
20. Dipipanone.
21. Ethylmethylthiambutene.
22. Etonitazene.

23. Etoxeridine.
24. Furethidine.
25. Hydroxypethidine.
26. Ketobemidone.
27. Levomoramide.
28. Levophenacylmorphan.
29. Morpheridine.
30. Noracymethadol.
31. Norlevorphanol.
32. Normethadone.
33. Norpipanone.
34. Phenadoxone.
35. Phenampromide.
36. Phenomorphan.
37. Phenoperidine.
38. Piritramide.
39. Proheptazine.
40. Properidine.
41. Propiram.
42. Racemoramide.
43. Trimeperidine.

(b) Any of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Acetorphine.
2. Acetyldihydrocodeine.
3. Benzylmorphine.
4. Codeine methylbromide.
5. Codeine-N-Oxide.
6. Cyprenorphine.
7. Desomorphine.
8. Dihydromorphine.
9. Etorphine (except hydrochloride salt).
10. Heroin.
11. Hydromorphinol.
12. Methyldesorphine.
13. Methylhydromorphine.
14. Morphine methylbromide.
15. Morphine methylsulfonate.
16. Morphine-N-Oxide.
17. Myrophine.
18. Nicocodeine.
19. Nicomorphine.
20. Normorphine.
21. Pholcodine.
22. Thebacon.
23. Drotebanol.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. 3, 4-methylenedioxyamphetamine.
2. 5-methoxy-3, 4-methylenedioxyamphetamine.
3. 3, 4, 5-trimethoxyamphetamine.
4. Bufotenine.
5. Diethyltryptamine.
6. Dimethyltryptamine.
7. 4-methyl-2, 5-dimethoxyamphetamine.
8. Ibogaine.
9. Lysergic acid diethylamide.
10. Mescaline.
11. Peyote, meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seed or extracts.
12. N-ethyl-3-piperidyl benzilate.
13. N-methyl-3-piperidyl benzilate.
14. Psilocybin.
15. Psilocyn.
16. 2, 5-dimethoxyamphetamine.
17. 4-bromo-2, 5-dimethoxyamphetamine.
18. 4-methoxyamphetamine.
19. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
20. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.
21. Thiophene analog of phencyclidine. Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP.

(d) Any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:

1. Mecloqualone. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 844; c. 1358, ss. 4, 5, 15; 1975, c. 443, s. 1; c. 790; 1977, c. 667, s. 3; c. 891, s. 1; 1979, c. 434, s. 1; 1981, c. 51, s. 9.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "North Carolina Drug Commission" in the second sentence of the introductory paragraph.

CASE NOTES

Evidence. — Testimony by a special agent that, "Two of the three substances that I purchased were MDA" did not constitute substantial evidence that the drug possessed and sold by defendant was in fact 3, 4-methylenedioxyamphetamine as charged in the bills of indictment. State v. Board, 296 N.C. 652, 252 S.E.2d 803 (1979).

Applied in State v. Hardy, 31 N.C. App. 67, 228 S.E.2d 487 (1976).

Cited in State v. Aiken, 286 N.C. 202, 209 S.E.2d 763 (1974); State v. Hart, 33 N.C. App.

235, 234 S.E.2d 430 (1977); State v. Board, 37 N.C. App. 581, 246 S.E.2d 581 (1978); State v. Mendez, 42 N.C. App. 141, 256 S.E.2d 405 (1979).

§ 90-90. Schedule II controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse; currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and the abuse of the substance may lead to severe psychic or physical dependence. The following controlled substances are included in this schedule:

(a) Any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, unless specifically excepted or unless listed in another schedule:

1. Opium and opiate, and any salt, compound, derivative, or preparation of opium and opiate, excluding apomorphine, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:
   (i) Raw opium.
   (ii) Opium extracts.
   (iii) Opium fluid extracts.
   (iv) Powdered opium.
   (v) Granulated opium.
   (vi) Tincture of opium.
   (vii) Codeine.
   (viii) Ethylmorphine.
   (ix) Etorphine hydrochloride.
   (x) Hydrocodone.
   (xi) Hydromorphone.
   (xii) Metopon.
   (xiii) Morphine.
   (xiv) Oxycodone.
   (xv) Oxymorphone.
   (xvi) Thebaine.
2. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1 of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium.
3. Opium poppy and poppy straw.
4. Coca leaves and any salts, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.
5. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation unless specifically exempted or listed in other schedules:

1. Alphaprodine.
2. Anileridine.
3. Bezitramide.
4. Dihydrocodeine.
5. Diphenoxylate.
6. Fentanyl.
7. Isomethadone.
8. Levomethorphan.
9. Levorphanol.
10. Metazocine.
11. Methadone.
12. Methadadone — Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
13. Moramide — Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid.
14. Pethidine.
15. Pethidine — Intermediate — A, 4-cyano-1-methyl-4-phenylpiperidine.
16. Pethidine — Intermediate — B, ethyl-4-phenylpiperidine-4-carboxylate.
17. Pethidine — Intermediate — C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
18. Phenazocine.
19. Piminodine.
20. Racemethorphan.
21. Racemorphan.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
2. Phenmetrazine and its salts.
3. Methamphetamine, including its salts, isomers, and salts of isomers.
4. Methylphenidate.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically exempted by the Commission or listed in another schedule:

1. Amobarbital
2. Methaqualone
3. Pentobarbital
4. Phencyclidine
5. Phencyclidine immediate precursors:
   a. 1-Phenylcyclohexylamine
   b. 1-Piperidinocyclohexanecarbonitrile (PCC)
6. Secobarbital. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 540, s. 6; c. 1358, ss. 6, 15; 1975, c. 443, s. 2; 1977, c. 667, s. 3; c. 891, s. 2; 1979, c. 434, s. 2; 1981, c. 51, s. 9.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "North Carolina Drug Commission" in the second sentence of the introductory paragraph. "Commission" has also been substituted for "Drug Commission" in sub-

section (d) in order to give effect to the obvious intent of the amendment.

CASE NOTES

Desoxyn. — Desoxyn is a trade name used by Abbott Laboratories, North Chicago, Illinois, for methamphetamine hydrochloride. State v. Newton, 21 N.C. App. 384, 204 S.E.2d 724 (1974).

Desoxyn is a controlled substance. In re Wilkins, 294 N.C. 528, 242 S.E.2d 829 (1978).

Butacaps, or Butasol capsules, are Butabarbital, a controlled substance, apparently somewhat less dangerous than Didrex and Desoxyn. In re Wilkins, 294 N.C. 528, 242 S.E.2d 829 (1978).

Cited in State v. Crews, 286 N.C. 41, 209 S.E.2d 462 (1974); State v. McNeil, 47 N.C. App. 30, 266 S.E.2d 824 (1980).

§ 90-91. Schedule III controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a potential for abuse less than the substances listed in Schedules I and II; currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence. The following controlled substances are included in this schedule:

(a) Repealed by Session Laws 1973, c. 540, s. 5.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
2. Chlorhexadol.
3. Glutethimide.
4. Lysergic acid.
5. Lysergic acid amide.
6. Methyprylon.
7. Sulfondiethylmethane.
8. Sulfonethylmethane.
9. Sulfonmethane.
10. Any compound, mixture or preparation containing
    (i) Amobarbital.
    (ii) Secobarbital.
    (iii) Pentobarbital.
    or any salt thereof and one or more active ingredients which are not included in any other schedule.
11. Any suppository dosage form containing
    (i) Amobarbital.
    (ii) Secobarbital.
    (iii) Pentobarbital.
    or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing as a suppository.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof unless specifically exempted or listed in another schedule:

1. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit with a four-fold or greater quantity of an isoquinoline alkaloid of opium.
4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
5. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture or preparation containing limited quantities of the following narcotic drugs, which shall include one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Paregoric, U.S.P.; provided, that no person shall purchase or receive by any means whatsoever more than one fluid ounce of paregoric within a consecutive 24-hour period, except on prescription issued by a duly licensed physician.

(f) Paregoric, U.S.P., may be dispensed at retail as permitted by federal law or administrative regulation without a prescription only by a registered pharmacist and no other person, agency or employee may dispense paregoric, U.S.P., even if under the direct supervision of a pharmacist.

(g) Notwithstanding the provisions of G.S. 90-91(f), after the pharmacist has fulfilled his professional responsibilities and legal responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of paregoric, U.S.P., may be completed by a nonpharmacist. A pharmacist may refuse to dispense a paregoric, U.S.P., substance until he is satisfied that the product is being obtained for medicinal purposes only.

(h) Paregoric, U.S.P., may only be sold at retail without a prescription to a person at least 18 years of age. A pharmacist must require every retail purchaser of a paregoric, U.S.P., substance to furnish suitable identification, including proof of age when appropriate, in order to purchase paregoric, U.S.P. The name and address obtained from such identification shall be entered in the record of disposition to consumers.

(i) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (a)1 and (a)2 of this schedule from the application of all or any part of

this Article if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system; and if the ingredients are included therein in such combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(j) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of said isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excluded or listed in some other schedule.

1. Benzphetamine.
2. Chlorphentermine.
3. Chlortermine.
4. Mazindol.
5. Phendimetrazine. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 540, s. 5; c. 1358, ss. 7, 15; 1975, c. 442; 1977, c. 667, s. 3; 1979, c. 434, s. 3; 1981, c. 51, s. 9.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "North Carolina Drug Commission" in the second sentence of the introductory paragraph and near the beginning of subsection (i).

CASE NOTES

Methamphetamine. — Before the second 1973 amendment, this section classed methamphetamine as a controlled substance. State v. Newton, 21 N.C. App. 384, 204 S.E.2d 724 (1974). See now § 90-90 and the note thereto.

Applied in State v. Guy, 13 N.C. App. 637, 186 S.E.2d 663 (1972); State v. Newton, 21 N.C. App. 384, 204 S.E.2d 724 (1974).

Cited in State v. Crews, 286 N.C. 41, 209 S.E.2d 462 (1974).

§ 90-92. Schedule IV controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a low potential for abuse relative to the substances listed in Schedule III of this Article; currently accepted medical use in the United States; and limited physical or psychological dependence relative to the substances listed in Schedule III of this Article. The following controlled substances are included in this schedule:

(a) Depressants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Barbital
2. Chloral betaine
3. Chloral hydrate
4. Chlorazepate

5. Chlordiazepoxide
6. Clonazepam
7. Diazepam
8. Ethchlorvynol
9. Ethinamate
10. Flurazepam
11. Lorazepam
12. Mebutamate
13. Meprobamate
14. Methohexital
15. Methylphenobarbital
16. Oxazepam
17. Paraldehyde
18. Petrichloral
19. Phenobarbital
20. Prazepam

(b) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active, nonnarcotic, medicinal ingredients not having a stimulant or depressant effect on the central nervous system; provided, that such admixtures shall be included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system.

(c) Any material, compound, mixture, or preparation which contains any of the following substances, including its salts, or isomers and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

1. Fenfluramine.
2. Pentazocine.

(d) Stimulants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Diethylpropion.
2. Pemoline (including organometallic complexes and chelates thereof).
3. Phentermine.

(e) Other Substances. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

1. Dextropropoxyphene (Alpha-(plus)- 4-dimethyiamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(f) Narcotic Drugs. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

1. Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1358, ss. 8, 15; c. 1446, s. 5; 1975, cc. 401, 819; 1977, c. 667, s. 3; c. 891, s. 3; 1979, c. 434, ss. 4-6; 1981, c. 51, s. 9.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "North Carolina Drug Commission" in the second sentence of the introductory paragraph and near the beginning of subsection (b).

CASE NOTES

Applied in State v. King, 44 N.C. App. 31, 259 S.E.2d 919 (1979).

§ 90-93. Schedule V controlled substances.

(a) This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a low potential for abuse relative to the substances listed in Schedule IV of this Article; currently accepted medical use in the United States; and limited physical or psychological dependence relative to the substances listed in Schedule IV of this Article. The following controlled substances are included in this schedule:

1. Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic alone:
   (i) Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.
   (ii) Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams.
   (iii) Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams.
   (iv) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
   (v) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
   (vi) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
2. Loperamide.

(b) A Schedule V substance may be sold at retail without a prescription only by a registered pharmacist and no other person, agent or employee may sell a Schedule V substance even if under the direct supervision of a pharmacist.

(c) Notwithstanding the provisions of G.S. 90-93(b), after the pharmacist has fulfilled the responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of a Schedule V substance, may be completed by a nonpharmacist. A pharmacist may refuse to sell a Schedule V substance until he is satisfied that the product is being obtained for medicinal purposes only.

(d) A Schedule V substance may be sold at retail without a prescription only to a person at least 18 years of age. The pharmacist must require every retail purchaser of a Schedule V substance to furnish suitable identification, including proof of age when appropriate, in order to purchase a Schedule V substance. The name and address obtained from such identification shall be entered in the record of disposition to consumers. (1971, c. 919, s. 1; 1973, c. 476,

s. 128; c. 1358, ss. 9, 15; 1977, c. 667, s. 3; 1979, c. 434, ss. 7, 8; 1981, c. 51, s. 9.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "North Carolina Drug Commission" in the second sentence of subsection (a).

§ 90-94. Schedule VI controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that such substance comes within this schedule, the Commission shall find: no currently accepted medical use in the United States, or a relatively low potential for abuse in terms of risk to public health and potential to produce psychic or physiological dependence liability based upon present medical knowledge, or a need for further and continuing study to develop scientific evidence of its pharmacological effects.

The following controlled substances are included in this schedule:

1. Marijuana.
2. Tetrahydrocannabinols. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1358, s. 15; 1977, c. 667, s. 3; 1981, c. 51, s. 9.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission" for "North Carolina Drug Commission" in the second sentence.

Legal Periodicals. — For survey of 1976 case law on criminal law, see 55 N.C.L. Rev. 976 (1977).

CASE NOTES

Findings Not Required as to Marijuana. — The requirement that the Drug Authority (now Commission) make findings as to whether a substance comes within this section applies only to drugs the Authority (now Commission) may wish to add, delete or reschedule, and not to substances, such as marijuana, which have already been included by the General Assembly. State v. Dietz, 289 N.C. 488, 223 S.E.2d 357 (1976).

In a prosecution for felonious sale and delivery of marijuana and felonious possession of marijuana with intent to sell, it is not necessary for the State to show that the Drug Authority (now Commission) has made a finding that marijuana is a controlled substance since it has been listed as such under this section. State v. Dietz, 289 N.C. 488, 223 S.E.2d 357 (1976).

Applied in State v. McIntyre, 13 N.C. App. 479, 186 S.E.2d 207 (1972); State v. McKinney, 288 N.C. 113, 215 S.E.2d 578 (1975).

Quoted in State v. Harvey, 281 N.C. 1, 187 S.E.2d 706 (1972).

Stated in State v. Shufford, 34 N.C. App. 115, 237 S.E.2d 481 (1977).

Cited in State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977); State v. McGill, 296 N.C. 564, 251 S.E.2d 616 (1979); State v. Board, 296 N.C. 652, 252 S.E.2d 803 (1979).

§ 90-95. Violations; penalties.

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

(b) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(1) with respect to:

(1) A controlled substance classified in Schedule I or II shall be punished as a Class H felon;

(2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, but the transfer of less than 5 grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than two years or fined not more than two thousand dollars ($2,000), or both in the discretion of the court; but if the quantity of the controlled substance, or combination of the controlled substances, exceeds 100 tablets, capsules or other dosage units, or equivalent quantity, including one-half gram or more of phencyclidine or one gram or more of cocaine, the violation shall be punishable as a Class I felony;

(3) A controlled substance classified in Schedule V shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than six months or fined not more than five hundred dollars ($500.00), or both in the discretion of the court;

(4) A controlled substance classified in Schedule VI shall be guilty of a misdemeanor and shall be fined not more than one hundred dollars ($100.00); but if the quantity of the controlled substance exceeds one ounce (avoirdupois) of marijuana or one tenth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits an offense under this Article for which the prescribed punishment includes imprisonment for not more than two years, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon;

(4) If any person commits an offense under this Article for which the prescribed punishment includes imprisonment for not more than six months, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any

provision of this Article, he shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than two years or fined not more than two thousand dollars ($2,000), or both in the discretion of the court;

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by delivering a controlled substance to a person under 16 years of age shall be punished as a Class E felon;

(6) For the purpose of increasing punishment, previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial;

(7) If any person commits an offense under this Article for which the prescribed punishment includes only a fine, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than six months or fined not more than five hundred dollars ($500.00), or both in the discretion of the court.

(f) Repealed by Session Laws 1975, c. 360, s. 2, effective July 1, 1975 to July 1, 1977.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Clinical Toxicological Lab, North Carolina Baptist Hospital, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court division of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 50 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 50 pounds, but less than 100 pounds, such person shall be punished as a Class H felon and shall be sentenced to a term of at least five years in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 100 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a term of at least seven years in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a term of at least 14 years in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a term of at least 35 years in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a term of at least seven years in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a term of at least 14 years in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a term of at least 35 years in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of coca leaves or any salts, compound, derivative, or preparation thereof which is chemically equivalent or identical to any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a term of at least seven years in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a term of at least 14 years in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a term of at least 35 years in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, naloxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a term of at least 14 years in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a term of at least 18 years in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a term of at least 45 years in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(5) A person sentenced under this subsection is not eligible for early release or early parole if the person is sentenced as a committed youthful offender and the sentencing judge may not suspend the sentence or place the person sentenced on probation. However, the sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section. (1971, c. 919, s. 1; 1973, c. 654, s. 1; c. 1078; c. 1358, s. 10; 1975, c. 360, s. 2; 1977, c. 862, ss. 1, 2; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1251, ss. 4-7.)

Cross References. — For statute providing the maximum punishment for felonies, see § 14-1.1. As to furnishing controlled substances to inmates of charitable, mental or penal institutions, see § 14-258.1.

Editor's Note. — Session Laws 1975, c. 360, s. 2, amended this section by repealing subsection (f), which read as follows:

"(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence but shall not preclude parole. If parole is granted, special probation shall become effective in place of parole. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation. A person whose special probation term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment."

The 1975 amendatory act expired by its own terms July 1, 1977. It is questionable whether the repealed subsection was revived by the expiration of the act.

Effect of Amendments. — The 1979 amendment, effective July 1, 1981, substituted "punished as a Class H felon" for "guilty of a felony and shall be sentenced to a term of imprisonment of not more than 10 years or fined not more than ten thousand dollars ($10,000), or both in the discretion of the court" in subdivision (1) of subsection (b) and substituted "punished as a Class I felon" for "guilty of a felony and shall be sentenced to a term of

imprisonment of not more than five years or fined not more than five thousand dollars ($5,000), or both in the discretion of the court" in subdivision (2) of subsection (b), in subsection (c), and in subdivision (1) of subsection (d). The amendment also substituted "punishable as a Class I felony" for "a felony punishable by a term of imprisonment of not more than five years or a fine of not more than five thousand dollars ($5,000), or both, in the discretion of the court" in subdivision (2) of subsection (d) and for "a felony punishable by a term of imprisonment of not more than five years or a fine of not more than five thousand dollars ($5,000), or both in the discretion of the court" in subdivision (4) of subsection (d). In subsection (e), the amendment deleted subdivisions (1) and (2), relating to punishment for second and subsequent offenses, and substituted "punished as a Class I felon" for "guilty of a felony and shall be sentenced to a term of imprisonment of not more than five years or fined not more than five thousand dollars ($5,000), or both in the discretion of the court" in subdivision (3) and substituted "punished as a Class E felon" for "guilty of a felony and shall be sentenced to a term of imprisonment of not less than five years nor more than 30 years" in subdivision (5). The 1979 amendatory act was originally made effective July 1, 1980, but was amended by Session Laws 1979, 2nd Sess., c. 1316, s. 47, so as to postpone the effective date to March 1, 1981, by Session Laws 1981, c. 63, so as to postpone the effective date to April 15, 1981, and by Session Laws 1981, c. 179, so as to postpone the effective date to July 1, 1981.

Session Laws 1979, c. 760, s. 6, as amended by Session Laws 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; and 1981, c. 179, s. 14, provides: "This act shall become effective on July 1, 1981, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

Session Laws 1979, 2nd Sess., c. 1251, ss. 4, 5 and 6, effective July 1, 1980, added "Except as provided in subsections (h) and (i) of this section," at the beginning of subsections (b) and (d) and added subsections (h) and (i). Session Laws 1979, 2nd Sess., c. 1251, s. 7, effective July 1, 1981, rewrote the penalty provisions in subsection (h) as enacted by s. 6 of the same act, substituted provisions for punishment as a specified class of felon for provisions as to maximum punishment, and increased the minimum punishments. Section 7 of the 1979 2nd Sess. act also eliminated former subdivision (5) of subsection (h), requiring a convicted person to serve at least the minimum prison term provided for release or parole, and redesignated former subdivisions (6) and (7) as (5) and (6). Session Laws 1979, 2nd Sess., c. 1251, s. 7, was originally made effective March 1, 1981, but was amended by Session Laws 1981, c. 63, so as to postpone the effective date to April 15, 1981, and by Session Laws 1981, c. 179, so as to postpone the effective date to July 1, 1981.

Session Laws 1979, 2nd Sess., c. 1251, s. 8, provides: "Nothing in Sections 6 or 7 hereof shall be construed to render lawful any acts committed prior to the effective dates of those sections respectively and unlawful at the time said acts occurred; and nothing contained herein shall be construed to affect any prosecution instituted under Section 6 hereof and pending on the effective date of Section 7 hereof."

Session Laws 1979, 2nd Sess., c. 1251, s. 9, contains a severability clause.

Legal Periodicals. — For note on the punishment of physicians under the Controlled Substances Act, see 56 N.C.L. Rev. 154 (1978).

For survey of 1979 criminal law, see 58 N.C.L. Rev. 1350 (1980).

CASE NOTES

I. General Consideration.
II. Manufacture.
III. Sale or Delivery.
IV. Possession.
A. In General.
B. Possession with Intent to Sell or Deliver.

I. GENERAL CONSIDERATION.

Section Is Constitutional. — This section, related to the possession and distribution of controlled substances, is constitutional. State v. McDougald, 18 N.C. App. 407, 197 S.E.2d 11, cert. denied, 283 N.C. 756, 198 S.E.2d 726 (1973), decided under this section as it stood before the 1973 revision.

Practice of Arresting for Possession of Marijuana But Not Alcoholic Beverages. — The practice of arresting persons present at an arena who have marijuana in their possession

and not arresting persons found at the arena who have alcoholic beverages in their possession is not unconstitutional and does not violate either the due process or equal protection clauses of U.S. Const., amend. 14. Wheaton v. Hagan, 435 F. Supp. 1134 (M.D.N.C. 1977).

Double Jeopardy. — Defendant was not subjected to double jeopardy when he was convicted and separately sentenced to both felonious possession and felonious transportation of the same package of heroin since the felonious transportation involves acts not necessarily a part of, nor a requisite to, felonious possession. State v. Harrington, 283 N.C. 527, 196 S.E.2d 742, cert. denied, 414 U.S. 1011, 94 S. Ct. 375, 38 L. Ed. 2d 249 (1973), decided prior to the 1973 revision of this section.

Possession with intent to sell and sale are distinct offenses, and the former is not a lesser included offense of the latter. State v. Saunders, 35 N.C. App. 359, 241 S.E.2d 351 (1978).

Neither the offense of unauthorized possession nor the offense of unauthorized sale of a controlled substance is included within the other offense and one placed in jeopardy as to the one offense is not thereby placed in jeopardy as to the other. Thus, one charged with both offenses may be convicted of both and sentenced to imprisonment for each. State v. Aiken, 286 N.C. 202, 209 S.E.2d 763 (1974).

Possession and sale are separate and distinct offenses. State v. Joyner, 37 N.C. App. 216, 245 S.E.2d 592 (1978).

Possession of methamphetamine and sale of methamphetamine are two separate and distinct offenses, and a defendant can be convicted of both crimes and not have his constitutional rights violated. State v. Salem, 50 N.C. App. 419, — S.E.2d — (1981).

Possession of heroin and distribution of heroin are seperate and distinct crimes, and each may be punished as provided by law. State v. Thornton, 283 N.C. 513, 196 S.E.2d 701 (1973), decided under this section as it stood prior to the 1973 revision.

Defendant was not subjected to double jeopardy when he was placed on trial for the two offenses of possession of heroin and distribution of heroin and consecutive sentences were imposed for two convictions. State v. Thornton, 283 N.C. 513, 196 S.E.2d 701 (1973), decided prior to the 1973 revision of this section.

Possession of a controlled substance and distribution of the same controlled substance are separate and distinct crimes, and each may be punished as provided by law, even where the possession and distribution in point of time were the same. Unlawful possession cannot be considered a lesser included offense of the crime of unlawful distribution. State v. Brown, 20 N.C. App. 71, 200 S.E.2d 666 (1973), cert. denied, 284 N.C. 617, 202 S.E.2d 274 (1974), decided under this section as it stood before the 1973 revision.

Possession and distribution of heroin are separate and distinct offenses, and a defendant may be prosecuted for both without violating the constitutional prohibition against double jeopardy. State v. Patterson, 21 N.C. App. 443, 204 S.E.2d 709 (1974), decided under this section as it stood before the 1973 revision.

Where a licensed physician merely writes a prescription for a controlled substance listed in Schedules II, III, IV or V, and nothing more, such act is not a violation of subsection (a)(1). State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977).

However, if that prescription is written outside the normal course of professional practice in North Carolina and not for a legitimate medical purpose, the physician violates § 90-108. State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977).

Drug Referred to in Indictment by Trade Name. — Desoxyn is a trade name for methamphetamine hydrochloride. Thus there was no variance between the charge in the bill of indictment that defendant possessed Desoxyn and the evidence which tended to prove defendant possessed methamphetamine. State v. Newton, 21 N.C. App. 384, 204 S.E.2d 724 (1974), decided under this section as it stood before the 1973 revision.

It was proper for the trial judge to take judicial notice and to instruct the jury that Desoxyn and methamphetamine are the same thing. State v. Newton, 21 N.C. App. 384, 204 S.E.2d 724 (1974), decided under this section as it stood before the 1973 revision.

Establishing Identity of Substance. Testimony by a special agent that, "Two of the three substances that I purchased were MDA" did not constitute substantial evidence that the drug possessed and sold by defendant was in fact 3, 4-methylenedioxyamphetamine as charged in the bills of indictment. State v. Board, 296 N.C. 652, 252 S.E.2d 803 (1979).

Qualified chemist's identification of green vegetable material as marijuana constituted sufficient showing by the State that it was Cannabis sativa L., a controlled substance under this section. State v. Bell, 24 N.C. App. 430, 210 S.E.2d 905 (1975).

Subsection (g) was not intended to apply to proceedings which result in adjudications of delinquency in the district

court. In re Arthur, 291 N.C. 640, 231 S.E.2d 614 (1977).

Application of Interested Witness Rule. — The trial court did not err in a prosecution for possession with intent to sell and deliver, and delivery, of marijuana in failing to find that the undercover officer was an interested witness per se, and the jury was properly instructed that the interested witness rule would apply if the jury determined that he was an interested witness. State v. Richardson, 36 N.C. App. 373, 243 S.E.2d 918 (1978).

Evidence of Other Drug Violations. — In drug cases, evidence of other drug violations is relevant and admissible if it tends to show plan or scheme, disposition to deal in illicit drugs, knowledge of the presence and character of the drug, or presence at and possession of the premises where the drugs are found. State v. Richardson, 36 N.C. App. 373, 243 S.E.2d 918 (1978).

Sufficiency of Evidence to Withstand Motion for Nonsuit. — Evidence that (1) officers heard running through the house immediately after announcing the presence of the police and requesting entry; (2) defendants were found in the downstairs bedroom with the packaged marijuana next to the kitchen where the manufacturing paraphernalia was assembled; and (3) two blenders were in operation and manufacturing appeared to be in progress, was sufficient to withstand a motion for nonsuit on charges of manufacture and possession of marijuana. State v. Shufford, 34 N.C. App. 115, 237 S.E.2d 481, petition for review denied, 293 N.C. 592, 239 S.E.2d 265 (1977).

As to "close juxtaposition" of defendants to marijuana as sufficient to withstand nonsuit on charges of manufacture and possession, see State v. Shufford, 34 N.C. App. 115, 237 S.E.2d 481, petition for review denied, 293 N.C. 592, 239 S.E.2d 265 (1977).

Verdict and Judgment. — Where there was nothing in the record to indicate that the defendants had been convicted previously of a violation of subsection (d), the recital in the judgments that the defendants were found guilty of a felony as a result of possession of phencyclidine hydrochloride was erroneous, and the judgments were modified by striking the word "felony" as it related to the conviction of the defendants for simple possession of phencyclidine hydrochloride. State v. Gagne, 22 N.C. App. 615, 207 S.E.2d 384, cert. denied, 285 N.C. 761, 209 S.E.2d 285 (1974).

Applied in State v. Guy, 13 N.C. App. 637, 186 S.E.2d 663 (1972); State v. Brady, 16 N.C. App. 555, 192 S.E.2d 640 (1972); State v. Higgins, 16 N.C. App. 581, 192 S.E.2d 699 (1972); State v. McEachin, 17 N.C. App. 634, 195 S.E.2d 349 (1973); State v. Cobb, 18 N.C. App. 221, 196 S.E.2d 521 (1973); State v. Clark, 18 N.C. App. 473, 197 S.E.2d 81 (1973); State v. Hendrix, 19 N.C. App. 99, 197 S.E.2d 892 (1973); State v. Watson, 19 N.C. App. 160, 198 S.E.2d 185 (1973); State v. Keitt, 19 N.C. App. 414, 199 S.E.2d 23 (1973); State v. Crisp, 19 N.C. App. 456, 199 S.E.2d 155 (1973); State v. Haddock, 19 N.C. App. 714, 200 S.E.2d 437 (1973); State v. McQueary, 20 N.C. App. 472, 201 S.E.2d 556 (1974); State v. Wooten, 20 N.C. App. 499, 201 S.E.2d 696 (1974); State v. Akel, 21 N.C. App. 415, 204 S.E.2d 549 (1974); State v. Blackwelder, 22 N.C. App. 18, 205 S.E.2d 609 (1974); State v. Armstrong, 22 N.C. App. 36, 205 S.E.2d 597 (1974); State v. Stalls, 22 N.C. App. 265, 206 S.E.2d 500 (1974); State v. Williams, 22 N.C. App. 502, 206 S.E.2d 783 (1974); State v. Carriker, 287 N.C. 530, 215 S.E.2d 134 (1975); State v. Battle, 26 N.C. App. 478, 216 S.E.2d 458 (1975); State v. Hardy, 31 N.C. App. 67, 228 S.E.2d 487 (1976); State v. Vinson, 31 N.C. App. 318, 229 S.E.2d 203 (1976); State v. Gillespie, 31 N.C. App. 520, 230 S.E.2d 154 (1976); State v. Mendez, 42 N.C. App. 141, 256 S.E.2d 405 (1979); State v. King, 44 N.C. App. 31, 259 S.E.2d 919 (1979).

Quoted in State v. Reese, 33 N.C. App. 89, 234 S.E.2d 41 (1977).

Cited in State v. Jackson, 280 N.C. 563, 187 S.E.2d 27 (1972); State v. McIntyre, 281 N.C. 304, 188 S.E.2d 304 (1972); State v. Godwin, 13 N.C. App. 700, 187 S.E.2d 400 (1972); State v. Cobb, 21 N.C. App. 66, 202 S.E.2d 801 (1974); State v. Crews, 286 N.C. 41, 209 S.E.2d 462 (1974); State v. Chapman, 24 N.C. App. 462, 211 S.E.2d 489 (1975); State v. Beddard, 35 N.C. App. 212, 241 S.E.2d 83 (1978); Dove v. North Carolina Bd. of Alcoholic Control, 37 N.C. App. 605, 246 S.E.2d 584 (1978); State v. Bagley, 39 N.C. App. 328, 250 S.E.2d 87 (1979); State v. King, 42 N.C. App. 210, 256 S.E.2d 247 (1979); State v. Williams, 299 N.C. 529, 263 S.E.2d 571 (1980); State v. Beam, 45 N.C. App. 82, 262 S.E.2d 350 (1980).

II. MANUFACTURE.

The manufacturing of marijuana is a felony, regardless of the quantity manufactured or the intent of the offender. This differs from the offense of possession of marijuana in that in specified cases simple possession constitutes a misdemeanor while possession for purpose of distribution is made a felony. State v. Elam, 19 N.C. App. 451, 199 S.E.2d 45, cert. denied, 284 N.C. 256, 200 S.E.2d 656 (1973), decided under this section as it stood before the 1973 revision.

Indictment for Manufacture Need Not Allege Intent to Distribute. — The averment in the indictment "with intent to distribute" is not necessary in charging the felony of manufacturing marijuana and is treated as surplusage. State v. May, 20 N.C. App. 179, 201 S.E.2d 95 (1973), decided under this section as it stood before the 1973 revision.

When Intent to Distribute Must Be Proved. — The burden is on the State to prove from the evidence beyond a reasonable doubt that, in cases where the defendant is charged with manufacture of a controlled substance and the activity constituting manufacture is preparation or compounding, the defendant intended to distribute the controlled substance. In proving such intent, the State would be able to rely upon ordinary circumstantial evidence (e.g., the amount of the controlled substance possessed, the nature of its packaging, labeling and storage, if any, the activities of the defendant with reference to the controlled substance) as evidence pertinent to intent. State v. Childers, 41 N.C. App. 729, 255 S.E.2d 654, cert. denied, 298 N.C. 302, 259 S.E.2d 916 (1979).

Evidence Insufficient to Establish Manufacture. — Where the only evidence of manufacturing was the fact that the marijuana was "packaged," and there was no showing when the marijuana was packaged, by whom, or for what purpose, and the marijuana and other items found were not established to have been defendant's, other than on the theory of constructive possession, the State failed to prove a sufficient nexus between the defendant, the marijuana, and other items to establish that (1) marijuana was being manufactured and (2) that it was being done by the defendant. State v. Baxter, 21 N.C. App. 81, 203 S.E.2d 93, rev'd on other grounds, 285 N.C. 735, 208 S.E.2d 696 (1974), decided under this section as it stood before the 1973 revision.

Evidence Sufficient to Establish Manufacture. — Evidence was sufficient to withstand a motion for judgment as of nonsuit on a charge of manufacture of marijuana where stripped stalks of marijuana were found growing behind a television antenna connected to the defendant's residence and marijuana plants were found growing in flower pots on a table in the defendant's front yard 32 feet from his residence. State v. Wiggins, 33 N.C. App. 291, 235 S.E.2d 265, cert. denied, 293 N.C. 592, 241 S.E.2d 513 (1977).

III. SALE OR DELIVERY.

"Delivery" Means "Transfer". — In a prosecution for felonious sale and delivery of marijuana, and felonious possession of marijuana with intent to sell, trial judge's charge to the jury placing the burden on the State to prove that defendant "transferred" the marijuana was not prejudicial error, since "delivery" means "transfer" under § 90-87. State v. Dietz, 289 N.C. 488, 223 S.E.2d 357 (1976).

One may unlawfully sell a controlled substance which he lawfully possesses. State v. Aiken, 286 N.C. 202, 209 S.E.2d 763 (1974).

Sale Unlawful under §§ 90-71 and 90-72 Is Violation of This Section. — When a drug is sold under circumstances which render the sale unlawful under §§ 90-71 and 90-72, there is also a violation of § 90-95 if the drug involved is a controlled substance. State v. Austin, 31 N.C. App. 20, 228 S.E.2d 507 (1976).

The sale of a controlled substance is a specific act and occurs only at one specific time. State v. Lankford, 31 N.C. App. 13, 228 S.E.2d 641 (1976).

The delivery of a controlled substance is a specific act and occurs only at one specific time. State v. Lewis, 32 N.C. App. 298, 231 S.E.2d 693 (1977).

Sale and Delivery Charged as Single Offense. — In a prosecution for felonious sale and delivery of marijuana, and felonious possession of marijuana with intent to sell, the fact that the State included in the same count as a single offense both sale and delivery, even though the two acts could have been charged as separate offenses, was not prejudicial to the defendant. State v. Dietz, 289 N.C. 488, 223 S.E.2d 357 (1976).

Indictment Must Allege Name of Purchaser. — An indictment charging the unlawful sale of marijuana must allege the name of the purchaser or that his name is unknown. State v. Long, 14 N.C. App. 508, 188 S.E.2d 690 (1972), decided prior to the 1971 revision of this Article.

This section contains no modification of the common-law requirement that the name of the person, to whom the accused allegedly sold narcotics unlawfully, be stated in the indictment when it is known. State v. Bennett, 280 N.C. 167, 185 S.E.2d 147 (1971), decided prior to the 1971 revision of this Article.

An indictment which does not include the narcotics purchaser's name, if known, fails to state sufficient facts to sustain a conviction. The Controlled Substances Act does not expressly eliminate the requirement that the name of a known purchaser be alleged in the indictment. State v. Ingram, 20 N.C. App. 464, 201 S.E.2d 532 (1974), decided under this section as it stood before the 1973 revision.

Where the bill of indictment alleges a sale of narcotics to one person and the proof tends to show only a sale to a different person, the variance is fatal. State v. Ingram, 20 N.C. App. 464, 201 S.E.2d 532 (1974), decided under this section as it stood before the 1973 revision.

Finding of Marijuana to Be a Controlled Substance Not Required. — In a prosecution for felonious sale and delivery of marijuana and felonious possession of marijuana with intent to sell, it is not necessary for the State to show that the Drug Authority (now Commission) has made a finding that marijuana is a controlled substance since it has been listed as such under § 90-94. State v. Dietz, 289 N.C. 488, 223 S.E.2d 357 (1976).

IV. POSSESSION.

A. In General.

Types of Possession. — An accused's possession of narcotics may be actual or constructive. State v. Harvey, 281 N.C. 1, 187 S.E.2d 706 (1972). See also State v. Bagnard, 24 N.C. App. 54, 210 S.E.2d 93 (1974), cert. denied, 286 N.C. 416, 211 S.E.2d 796 (1975); State v. Finney, 290 N.C. 755, 228 S.E.2d 433 (1976); State v. Weems, 31 N.C. App. 569, 230 S.E.2d 193 (1976).

Constructive Possession Defined. — Constructive possession is that which exists without actual personal dominion over a chattel, but with an intent and capability to maintain control and dominion. State v. Allen, 279 N.C. 406, 183 S.E.2d 680 (1971); State v. Spencer, 281 N.C. 121, 187 S.E.2d 779 (1972); State v. Davis, 25 N.C. App. 181, 212 S.E.2d 516 (1975); State v. Wells, 27 N.C. App. 144, 218 S.E.2d 225 (1975); State v. Wiggins, 33 N.C. App. 291, 235 S.E.2d 265, cert. denied, 293 N.C. 592, 241 S.E.2d 513 (1977).

Where a defendant has both the power and intent while acting in combination with others to control the disposition and use of heroin, he has it in his constructive possession. State v. Allen, 279 N.C. 406, 183 S.E.2d 680 (1971), decided prior to the 1971 revision of this Article.

Possession Is a Continuing Offense. — The possession of a controlled substance with the intent to sell it is a continuing offense from the time it was unlawfully obtained until the time the possessor divests himself of the possession. State v. Lankford, 31 N.C. App. 13, 228 S.E.2d 641 (1976); State v. Lewis, 32 N.C. App. 298, 231 S.E.2d 693 (1977).

Included Offenses. — To prove the offense of possession of over one ounce of marijuana, the State must show possession and that the amount possessed was greater than one ounce. To prove the offense of possession with intent to sell or deliver marijuana, the State must show possession of any amount of marijuana and that the person possessing the substance intended to sell or deliver it. Thus, the two crimes each contain one element that is not necessary for proof of the other crime. One is not a lesser included offense of the other. State v. McGill, 296 N.C. 564, 251 S.E.2d 616 (1979).

To aid or abet one in the crime of possession the act or encouragement must be done knowingly with the intent to aid the possessor obtain or retain possession. State v. Keeter, 42 N.C. App. 642, 257 S.E.2d 480 (1979).

Establishing Possession. — An accused has possession of narcotics within the meaning of the law when he has both the power and intent to control their disposition or use. State v. Harvey, 281 N.C. 1, 187 S.E.2d 706 (1972); State v. Davis, 20 N.C. App. 191, 201 S.E.2d 61 (1973); State v. Bagnard, 24 N.C. App. 54, 210 S.E.2d 93 (1974), cert. denied, 286 N.C. 416, 211 S.E.2d 796 (1975); State v. Finney, 290 N.C. 755, 228 S.E.2d 433 (1976); State v. Weems, 31 N.C. App. 569, 230 S.E.2d 193 (1976).

The requirements of power and intent necessarily imply that a defendant must be aware of the presence of an illegal drug if he is to be convicted of possessing it. State v. Davis, 20 N.C. App. 191, 201 S.E.2d 61 (1973), cert. denied, 284 N.C. 618, 202 S.E.2d 274 (1974), decided under this section as it stood before the 1973 revision.

Where narcotics are found on the premises under the control of an accused, this fact, in and of itself, gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury on a charge of unlawful possession. State v. Harvey, 281 N.C. 1, 187 S.E.2d 706 (1972); State v. Balsom, 17 N.C. App. 655, 195 S.E.2d 125 (1973); State v. Finney, 290 N.C. 755, 228 S.E.2d 433 (1976); State v. Wiggins, 33 N.C. App. 291, 235 S.E.2d 265, cert. denied, 293 N.C. 592, 241 S.E.2d 513 (1977); State v. Blackburn, 34 N.C. App. 683, 239 S.E.2d 626, cert. denied, 294 N.C. 442, 241 S.E.2d 522 (1977).

Where narcotics are found on the premises under the control of the defendant, this fact, in and of itself, gives rise to an inference of knowledge and possession by him which may be sufficient to sustain a conviction for unlawful possession of narcotics, absent other facts which might leave in the minds of the jury a reasonable doubt as to his guilt. State v. Allen, 279 N.C. 406, 183 S.E.2d 680 (1971); State v. Wells, 27 N.C. App. 144, 218 S.E.2d 225 (1975).

The rule establishing "possession" by power and intent to control use and disposition does not compel submission of the case to the jury in every instance in which controlled substances are found on the premises of an accused. State v. Davis, 20 N.C. App. 191, 201 S.E.2d 61 (1973), cert. denied, 284 N.C. 618, 202 S.E.2d 274 (1974), decided under this section as it stood before the 1973 revision.

An accused has possession of contraband material within the meaning of the law when he has both the power and the intent to control its disposition or use. State v. Davis, 25 N.C. App. 181, 212 S.E.2d 516 (1975).

The crime of possession requires that the contraband be in the custody and control of the defendant and subject to his disposition. State v. Keeter, 42 N.C. App. 642, 257 S.E.2d 480 (1979).

The State is not required to prove exclusive possession or control of a controlled substance. State v. Barnes, 18 N.C. App. 263, 196 S.E.2d 576 (1973), decided prior to the 1973 revision of this section.

An accused has possession of marijuana within the meaning of this Article, when he has both the power and the intent to control its disposition or use, which power may be in him alone or in combination with another. Constructive possession is sufficient. State v. Baxter, 285 N.C. 735, 208 S.E.2d 696 (1974).

Mere proximity to persons or locations with drugs about them is usually insufficient, in the absence of other incriminating circumstances, to convict for possession. State v. Balsom, 17 N.C. App. 655, 195 S.E.2d 125 (1973); State v. Weems, 31 N.C. App. 569, 230 S.E.2d 193 (1976).

Amount of Substance Irrelevant. — Evidence that defendant possessed at most only a tiny amount of the substance heroin is sufficient for conviction. State v. Thomas, 20 N.C. App. 255, 201 S.E.2d 201 (1973), cert. denied, 284 N.C. 622, 202 S.E.2d 277 (1974), decided under this section as it stood before the 1973 revision.

For purposes of this section, no limitation is set of the amount of the controlled substance which must be possessed in order to come within its prohibition. State v. Young, 20 N.C. App. 316, 201 S.E.2d 370 (1973), decided under this section as it stood before the 1973 revision.

This section makes it unlawful to possess any amount of heroin regardless of value. State v. Bell, 33 N.C. App. 607, 235 S.E.2d 886, appeal dismissed, 293 N.C. 254, 237 S.E.2d 536 (1977).

Possessor's Knowledge of Nature of Substance. — Possession of a bottle cap containing a residue of heroin by a person unfamiliar with the uses of heroin might well be consistent with innocent possession because of lack of knowledge by the possessor of the contraband nature of the article possessed. Possession of such an article by one sophisticated in the use of drugs is quite another matter. Evidence of the marks on defendant's arms was admissible as being relevant to show his prior knowledge. State v. Thomas, 20 N.C. App. 255, 201 S.E.2d 201 (1973), cert. denied, 284 N.C. 622, 202 S.E.2d 277 (1974), decided under this section as it stood before the 1973 revision.

Establishing Time and Place of Unlawful Possession Not Essential. — For a charge of unlawful possession of narcotics, time and place are not essential elements of the offense. State v. Bennett, 280 N.C. 167, 185 S.E.2d 147 (1971), decided prior to the 1971 revision of this Article.

Evidence Insufficient. — Where there was no evidence concerning whether the flower bed and cornfield in which marijuana was located were on defendant's property or otherwise under his control, nor any evidence linking defendant to the marijuana other than the fact that it was growing near his trailer, admission of the marijuana into evidence was error in a prosecution for manufacture and possession of marijuana with intent to sell and deliver. State v. Wiggins, 33 N.C. App. 291, 235 S.E.2d 265, cert. denied, 293 N.C. 592, 241 S.E.2d 513 (1977).

Evidence Sufficient. — Where the evidence tended to show that 10 glassine bags were wrapped together when removed from defendant, that a chemical analysis was made on only one of the bags and that bag was found to contain heroin, and that a visual examination only was made of the contents of the other bags, all the bags were competent to show what the search of defendant's premises produced and the evidence of the contents of the one tested glassine bag was sufficient for a conviction of possession of a quantity of narcotic drugs. State v. Steele, 18 N.C. App. 126, 196 S.E.2d 379 (1973), decided prior to the 1973 revision of this section.

Where there was ample evidence that each defendant had actual possession of LSD at the time they brought the bottles to a prosecution witness and delivered them to him for safekeeping, it was not necessary that the State show that defendants had possession, either actual or constructive, when they were subsequently arrested. State v. Hultman, 20 N.C. App. 201, 200 S.E.2d 841 (1973), cert. denied, 284 N.C. 619, 202 S.E.2d 275 (1974), decided under this section as it stood before the 1973 revision.

Where the State relied upon several factors to show that the defendant was in constructive possession of heroin, it was not necessary for the State to prove each separate fact beyond a reasonable doubt. It is enough, if upon the whole evidence, the jury is satisfied beyond a reasonable doubt of the defendant's guilt. State v. Davis, 25 N.C. App. 181, 212 S.E.2d 516 (1975).

Where the expert witness testified that he had examined and identified marijuana in numerous prior cases and trials, that he examined the contents of all the envelopes taken from defendant and that the contents of each appeared to be the same and that he selected five envelopes at random, all of which, after analysis of the contents, were found to contain marijuana, this evidence was sufficient to submit to the jury on the issue of whether the contents of all the envelopes were marijuana. State v. Hayes, 291 N.C. 293, 230 S.E.2d 146 (1976).

Circumstantial Evidence. — The State may overcome a motion to dismiss or motion for judgment as of nonsuit by presenting evidence which places the accused within such close juxtaposition to the narcotic drugs as to justify the jury in concluding that the same was in his possession. State v. Harvey, 281 N.C. 1, 187 S.E.2d 706 (1972); State v. Bagnard, 24 N.C. App. 54, 210 S.E.2d 93 (1974), cert. denied, 286 N.C. 416, 211 S.E.2d 796 (1975); State v. Finney, 290 N.C. 755, 228 S.E.2d 433 (1976); State v. Wiggins, 33 N.C. App. 291, 235 S.E.2d 265, cert. denied, 293 N.C. 592, 241 S.E.2d 513 (1977).

The State's evidence was sufficient to support a reasonable inference that marijuana was in defendant's possession where it placed defendant within three or four feet of marijuana in defendant's home, and no one else was in the room where the marijuana was found. State v. Harvey, 281 N.C. 1, 187 S.E.2d 706 (1972), decided prior to the 1973 revision of this section.

The State's evidence was sufficient to support a reasonable inference that defendant exercised custody, control, and dominion over marijuana found in a pig shed located approximately 20 yards directly behind defendant's residence, where it tended to show that defendant had been seen on numerous occasions in and around the outbuildings directly behind his house, and that marijuana seeds were found in defendant's bedroom. State v. Spencer, 281 N.C. 121, 187 S.E.2d 779 (1972), decided prior to the 1973 revision of this section.

The State's evidence was sufficient to be submitted to the jury on the issue of defendant's guilt of feloniously growing marijuana where it tended to show that (1) marijuana seeds were found in defendant's bedroom, (2) marijuana was found in a pigpen located 20 yards directly behind defendant's residence, (3) an unintersected path began at the edge of the pigpen and extended some distance to a cornfield where marijuana was found growing, and (4) the wire fencing at the beginning of the path was lower than the remainder of the path. State v. Spencer, 281 N.C. 121, 187 S.E.2d 779 (1972), decided prior to the 1973 revision of this section.

When one occupies a house, either alone or together with others as a tenant and as such has control over the premises, this fact in and of itself gives rise to the inference of both knowledge and control. State v. Walsh, 19 N.C. App. 420, 199 S.E.2d 38, cert. denied, 284 N.C. 258, 200 S.E.2d 658 (1973), decided under this section as it stood before the 1973 revision.

Where marijuana was found in a bedroom of defendant's home, and correspondence addressed to defendant was in the room, it is clear that the defendant was in possession of this marijuana. It was in his custody and control and subject to his disposition. State v. McDougald, 18 N.C. App. 407, 197 S.E.2d 11, cert. denied, 283 N.C. 756, 198 S.E.2d 726 (1973), decided under this section as it stood before the 1973 revision.

Evidence of constructive possession of marijuana was sufficient to show both the power and intent to control disposition or use of an apartment where: the apartment was rented to defendants; there was absolutely no evidence that they had sublet to anyone; the current telephone bill showed telephone calls to the homes of defendants; one's I.D. card was found in a bedroom; and the rental record showed the rent to have been paid by the defendants. State v. Cockman, 20 N.C. App. 409, 201 S.E.2d 740, cert. denied, 285 N.C. 87, 203 S.E.2d 61 (1974), decided under this section as it stood before the 1973 revision.

Where police found 3,214 hits of blotter acid (L.S.D. in dots on pieces of paper) in the refrigerator, and there was evidence that the defendant was the lessee of the trailer in question and had been living there for six months or more, the State's evidence of possession was ample. State v. Juan, 20 N.C. App. 208, 200 S.E.2d 824 (1973), cert. denied, 284 N.C. 620, 202 S.E.2d 276 (1974), decided under this section as it stood before the 1973 revision.

Nothing else appearing, a man residing with his wife in an apartment, no one else residing or being present therein, may be deemed in constructive possession of marijuana located

therein, notwithstanding the fact that he is temporarily absent from the apartment and his wife is present therein. State v. Baxter, 285 N.C. 735, 208 S.E.2d 696 (1974).

Where defendant had been given the keys and the custody of a vehicle by its owner, there were 443.1 grams of marijuana found in the car while defendant was the driver and one of the two bags of marijuana was located just inside the car's door on the driver's side, unobstructed by the seat, viewing the evidence in a light most favorable to the State, the jury could find that defendant had both the power and the intent to control its disposition or use so as to have it in his constructive possession. State v. Bagnard, 24 N.C. App. 54, 210 S.E.2d 93 (1974), cert. denied, 286 N.C. 416, 211 S.E.2d 796 (1975).

Evidence tending to show that defendant had possession and control of and claimed ownership to the automobile in which drugs were located was sufficient to show that defendant had constructive possession of the drugs in question. State v. Leonard, 34 N.C. App. 131, 237 S.E.2d 347 (1977).

Marijuana located in flower pots 32 feet in front of defendant's trailer and beside defendant's television antenna was within such close proximity to defendant's residence as to raise the inference that defendant had at least constructive possession of it. State v. Wiggins, 33 N.C. App. 291, 235 S.E.2d 265, cert. denied, 293 N.C. 592, 241 S.E.2d 513 (1977).

Verdict and Judgment. — Where the judgment and commitment indicate that defendant was found guilty of possession of heroin with intent to distribute, but the plea was only to the charge of possession and the verdict was guilty of a charge of possession only, the record should be conformed to correct the judgment to show that defendant pleaded not guilty to possession of heroin and that he was found guilty of possession of heroin. State v. Byrum, 20 N.C. App. 265, 201 S.E.2d 193 (1973), decided under this section as it stood before the 1973 revision.

B. Possession with Intent to Sell or Deliver.

Exemption Through Authorization. — One may be exempt from State prosecution for the possession or the sale or delivery of controlled substances if that person is authorized by the North Carolina Controlled Substances Act to so possess or sell or deliver such substances but proof of such exemption through authorization must be provided by the defendant. State v. McNeil, 47 N.C. App. 30, 266 S.E.2d 824, cert. denied, 301 N.C. 102, 273 S.E.2d 306 (1980), — U.S. —, 101 S. Ct. 1356, 67 L. Ed. 2d 339 (1981).

Possession is an element of possession with intent to deliver and the unauthorized possession is, of necessity, an offense included within the charge that the defendant did unlawfully possess with intent to deliver. State v. Aiken, 286 N.C. 202, 209 S.E.2d 763 (1974); State v. Stanley, 24 N.C. App. 323, 210 S.E.2d 496 (1974), rev'd on other grounds, 288 N.C. 19, 215 S.E.2d 589 (1975); State v. Cloninger, 37 N.C. App. 22, 245 S.E.2d 192 (1978).

It is impossible to possess a controlled substance with intent to distribute without having first possessed it, either actually upon the person or constructively, with the possible exception of a conspiracy or aiding and abetting. State v. Aikens, 22 N.C. App. 310, 206 S.E.2d 348 (1974); State v. Aiken, 286 N.C. 202, 209 S.E.2d 763 (1974); State v. Stanley, 24 N.C. App. 323, 210 S.E.2d 496 (1974), rev'd on other grounds, 288 N.C. 19, 215 S.E.2d 589 (1975).

Possession and Distribution Are Separate Offenses. — The two offenses, (1) the distribution, and (2) the possession with intent to distribute, are separate offenses. State v. Rush, 19 N.C. App. 109, 197 S.E.2d 891 (1973), decided under this section as it stood before the 1973 revision.

The possession and distribution of a single quantity of marijuana taking place on one occasion constitute two crimes for each of which defendant may be convicted and punished. State v. Yelverton, 18 N.C. App. 337, 196 S.E.2d 551, cert. denied, 283 N.C. 670, 197 S.E.2d 880 (1973), decided prior to the 1973 revision of this section.

Establishing Intent to Distribute. — The jury can reasonably infer an intent to distribute from the amount of the substance found, the manner in which it was packaged, and the presence of other packaging materials. State v. Baxter, 285 N.C. 735, 208 S.E.2d 696 (1974).

The quantity of narcotics found in defendant's possession, its packaging, its location and the paraphernalia for measuring and weighing are all circumstances from which it could properly be inferred that it was possessed for sale rather than for personal use. State v. Mitchell, 27 N.C. App. 313, 219 S.E.2d 295 (1975), cert. denied, 289 N.C. 301, 222 S.E.2d 701 (1976).

The quantity of the drug seized is a relevant factor in determining whether there was an intent to sell, and where the quantity seized is extremely small, the court should not instruct the jury on the intent to sell portion of the charge. State v. Francum, 39 N.C. App. 429, 250 S.E.2d 705 (1979).

This section clearly permits North Carolina courts and juries to examine and utilize the

quantities of drugs seized as one possible indicator of intent to distribute. State v. Mitchell, 27 N.C. App. 313, 219 S.E.2d 295 (1975), cert. denied, 289 N.C. 301, 222 S.E.2d 701 (1976).

The quantity of the drug seized is an indic or of intent to sell. State v. Cloninger, 37 N.C. App. 22, 245 S.E.2d 192 (1978).

In proving intent to distribute, the State may rely upon ordinary circumstantial evidence, such as the amount of controlled substance possessed, the nature of its packaging, labeling, and storage, and the activities of defendant with reference to the controlled substance. State v. Childers, 41 N.C. App. 729, 255 S.E.2d 654, cert. denied, 298 N.C. 302, 259 S.E.2d 916 (1979).

Entrapment No Defense Where Essential Elements of the Offense Denied. — Where a defendant was prosecuted for possession with intent to sell and sale and delivery of LSD, the question of entrapment did not arise from defendant's evidence since entrapment is not available as a defense when the accused denies the essential elements of the offense. State v. Neville, 49 N.C. App. 678, 272 S.E.2d 164 (1980), aff'd, — N.C. —, 276 S.E.2d 373 (1981).

Evidence Sufficient to Establish Intent. — Evidence of possession of 276 grams of marijuana, reinforced by other evidence showing concealment and that the marijuana was separated into smaller containers, indicating that it was being broken up for more ready distribution, would support a jury finding that the defendant actually had the intent to distribute. State v. McDougald, 18 N.C. App. 407, 197 S.E.2d 11, cert. denied, 283 N.C. 756, 198 S.E.2d 726 (1973), decided under this section as it stood before the 1973 revision.

Evidence Insufficient to Establish Intent. — Possession of 215.5 grams of marijuana, without some additional evidence, is not sufficient to raise an inference that the marijuana was for the purpose of distribution, and therefore is not sufficient to withstand a motion for judgment as of nonsuit on a charge of possession with intent to sell and distribute. State v. Wiggins, 33 N.C. App. 291, 235 S.E.2d 265, cert. denied, 293 N.C. 592, 241 S.E.2d 513 (1977).

§ 90-95.1. Continuing criminal enterprise.

(a) Any person who engages in a continuing criminal enterprise shall be punished as a Class C felon and in addition shall be subject to the forfeiture prescribed in subsection (b) of this section.

(b) Any person who is convicted under subsection (a) of engaging in a continuing criminal enterprise shall forfeit to the State of North Carolina:

(1) The profits obtained by him in such enterprise, and

(2) Any of his interest in, claim against, or property or contractual rights of any kind affording a source of influence over, such enterprise.

(c) For purposes of this section, a person is engaged in a continuing criminal enterprise if:

(1) He violates any provision of this Article, the punishment of which is a felony; and

(2) Such violation is a part of a continuing series of violations of this Article;

a. Which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management; and

b. From which such person obtains substantial income or resources.

(d) Repealed by Session Laws 1979, c. 760, s. 5. (1971, c. 919, s. 1; 1979, c. 760, s. 5.)

Cross references. — For statute providing the maximum punishment for felonies, see § 14-1.1.

Effect of Amendments. — The 1979 amendment, effective July 1, 1981, rewrote subsection (a) and deleted subsection (d), providing that imposition or execution of any sentence imposed under this section should not be suspended and probation should not be granted. The amendatory act was originally made effective July 1, 1980, but was amended by Session Laws 1979, 2nd Sess., c. 1316, s. 47, so as to

postpone the effective date to March 1, 1981, by Session Laws 1981, c. 63, so as to postpone the effective date to April 15, 1981 and by Session Laws 1981, c. 179, so as to postpone the effective date until July 1, 1981.

Session Laws 1979, c. 760, s. 6, as amended by Session Laws 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; and 1981, c. 179, s. 14, provides: "This act shall become effective on July 1, 1981, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

§ 90-95.2. Cooperation between law-enforcement agencies.

(a) The head of any law-enforcement agency may temporarily provide assistance to another agency in enforcing the provisions of this Article if so requested in writing by the head of the other agency. The assistance may comprise allowing officers of the agency to work temporarily with officers of the other agency (including in an undercover capacity) and lending equipment and supplies. While working with another agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges, and immunities (including those relating to the defense of civil actions and payment of judgments) as the officers of the requesting agency in addition to those he normally possesses. While on duty with the other agency, he shall be subject to the lawful operational commands of his superior officers in the other agency, but he shall for personnel and administrative purposes remain under the control of his own agency, including for purposes of pay. He shall furthermore be entitled to workmen's compensation when acting pursuant to this section to the same extent as though he were functioning within the normal scope of his duties.

(b) As used in this section:

(1) "Head" means any director or chief officer of a law-enforcement agency, including the chief of police of a local police department and the sheriff of a county, or an officer of the agency to whom the head of the agency has delegated authority to make or grant requests under this section, but only one officer in the agency shall have this delegated authority at any time.

(2) "Law-enforcement agency" means any State or local agency, force, department, or unit responsible for enforcing criminal laws in this State, including any local police department or sheriff's department.

(c) This section in no way reduces the jurisdiction or authority of State law-enforcement officers. (1975, c. 782, s. 1; 1981, c. 93, s. 1.)

Editor's Note. — Section 97-1.1 provides that references to "workmen's compensation" shall be deemed to refer to "workers' compensation."

Effect of Amendments. — The 1981 amendment added the parenthetical language in the third sentence of subsection (a).

§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases.

When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction. (1975, c. 782, s. 2.)

CASE NOTES

Quoted in Shore v. Edmisten, 290 N.C. 628, 227 S.E.2d 553 (1976).

§ 90-96. Conditional discharge and expunction of records for first offense.

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or is found guilty of a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Human Resources. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-95(a)(3) or G.S. 90-113.21 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Human Resources pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or

(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subdivision (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

For the purposes of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the course, or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke probation and/or deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to the petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited in G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Human Resources, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law-enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to Judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article. (1971, c. 919, s. 1; 1973, c. 654, s. 2; c. 1066; 1977, 2nd Sess., c. 1147, s. 11B; 1979, c. 431, ss. 3, 4; c. 550; 1981, c. 922, ss. 1-4.)

Effect of Amendments. — The 1981 amendment substituted "those" for "controlled" following "state relating to" in the first sentence of subsection (a), substituted "Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90" for "any schedule of this Article," substituted "Schedules II through VI" for "Schedules III through VI," and inserted "or by possessing drug paraphernalia as prohibited by G.S. 90-113.21" in that sentence, added the third sentence in subsection (a), inserted "or G.S. 90-113.14" in the seventh sentence of subsection (a), inserted "to determine discharge and dismissal" in the eighth sentence of subsection (a), added the last sentence in subsection (a), added subsection (a1), substituted "Schedules II through VI" for "Schedules III through VI" in the first sentence of subsection (d), and added subsection (e). The amendments in subsections (a) and (a1) are made effective October 1, 1981, while the amendments in subsections (d) and (e) are made effective upon ratification. The act was ratified July 10, 1981.

Legal Periodicals. — For an article entitled, "Prior Crimes As Evidence In Present Criminal Trials," see 1 Campbell L. Rev. 1 (1979).

CASE NOTES

Application and Purpose of Section. — This section is applicable only to first offenders and is clearly for the purpose of permitting the trial court to grant probation under conditions favorable to defendant. State v. Cordon, 21 N.C. App. 394, 204 S.E.2d 715, cert. denied, 285 N.C. 592, 206 S.E.2d 864 (1974).

When defendant consents to the terms of the probation, he abandons his right to appeal on the issue of guilt or innocence and commits himself to abide by the stipulated conditions. State v. Cordon, 21 N.C. App. 394, 204 S.E.2d 715, cert. denied, 285 N.C. 592, 206 S.E.2d 864 (1974).

A defendant on appeal from an order revoking probation may not challenge his adjudication of guilt. State v. Cordon, 21 N.C. App. 394, 204 S.E.2d 715, cert. denied, 285 N.C. 592, 206 S.E.2d 864 (1974).

Cited in Shore v. Edmisten, 290 N.C. 628, 227 S.E.2d 553 (1976).

OPINIONS OF ATTORNEY GENERAL

"Not over 21 years" Means "until Twenty-Second Birthday." — See opinion of Attorney General to Mr. Harvey D. Johnson, 42 N.C.A.G. 319 (1973).

§ 90-96.01. Drug education schools; responsibilities of the Department of Human Resources; fees.

(a) The Commission for Mental Health, Mental Retardation, and Substance Abuse Services shall establish standards and guidelines for the curriculum and operation of local drug education programs. The Department of Human Resources shall oversee the development of a statewide system of schools and shall insure that schools are available in all localities of the State as soon as is practicable.

(1) A fee of one hundred dollars ($100.00) shall be paid by all persons enrolling in an accredited drug education school established pursuant to this section. That fee must be paid to an official designated for that purpose and at a time and place specified by the area mental health, mental retardation, and substance abuse authority providing the course of instruction in which the person is enrolled. If the clerk of court in the county in which the person is convicted agrees to collect the fees, the clerk shall collect all fees for persons convicted in that county. The clerk shall pay the fees collected to the area mental health, mental retardation and substance abuse authority for the catchment area where the clerk is located regardless of the location where the defendant attends the drug education school and that authority shall distribute the funds in accordance with the rules and regulations of the Department. The fee must be paid in full within two weeks of the date the person is convicted and before he attends any classes, unless the court, upon a showing of reasonable hardship, allows the person additional time to pay the fee or allows him to begin the course of instruction without paying the fee. If the person enrolling in the school demonstrates to the satisfaction of the court that ordered him to enroll in the school that he is unable to pay and his inability to pay is not willful, the court may excuse him from paying the fee. Parents or guardians of persons attending drug education school shall be allowed to audit the drug education school along with their children or wards at no extra expense.

(2) The Department of Human Resources shall have the authority to approve programs to be implemented by area mental health, mental retardation, and substance abuse authorities. Area mental health, mental retardation, and substance abuse authorities may subcontract for the delivery of drug education program services. The Department shall have the authority to approve budgets and contracts with public and private governmental and nongovernmental bodies for the operation of such schools.

(3) Fees collected under this section and retained by the area mental health, mental retardation and substance abuse authority shall be placed in a nonreverting fund. That fund must be used, as necessary, for the operation, evaluation and administration of the drug educational schools; excess funds may only be used to fund other drug or alcohol programs. The area mental health, mental retardation and substance abuse authority shall remit five percent (5%) of each fee collected to the Department of Human Resources on a monthly basis. Fees received by the Department as required by this section may only be used in supporting, evaluating, and administering drug education schools, and any excess funds will revert to the General Fund.

(4) All fees collected by any area mental health, mental retardation and substance abuse authority under the authority of this section may not be used in any manner to match other State funds or be included in any computation for State formula-funded allocations.

(b) Willful failure to pay the fee is one ground for a finding that a person placed on probation or who may make application for expunction of all recordation of his arrest or conviction has not successfully completed the course. If the court determines the person is unable to pay, he shall not be deemed guilty of a willful failure to pay the fee. (1981, c. 922, s. 8.)

Editor's Note. — Session Laws 1981, c. 922, s. 11, makes this section effective Oct. 1, 1981.

§ 90-96.1. Immunity from prosecution for minors.

Whenever any person who is not more than 18 years of age, who has not previously been convicted of any offense under this Article or under any statute of the United States of any state relating to controlled substances included in any schedule of this Article, is accused with possessing or distributing a controlled substance in violation of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95 (a)(3), the court may, upon recommendation of the district attorney, grant said person immunity from prosecution for said violation(s) if said person shall disclose the identity of the person or persons from whom he obtained the controlled substance(s) for which said person is being accused of possessing or distributing. (1973, c. 47, s. 2; c. 654, s. 3.)

Editor's Note. — Pursuant to Session Laws 1973, c. 47, s. 2, "district attorney" has been substituted for "solicitor" in this section as enacted by Session Laws 1973, c. 654, s. 3.

CASE NOTES

Quoted in State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977).

§ 90-97. Other penalties.

Any penalty imposed for violation of this Article shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law. If a violation of this Article is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this State. (1971, c. 919, s. 1.)

Legal Periodicals. — For article, "Prior Crimes as Evidence in Present Criminal Trials," see 1 Campbell L. Rev. 1 (1979).

Cross References. — For statute providing the maximum punishment for felonies, see § 14-1.1.

Add Bulletin

Alcohol and Drug Defense Program

North Carolina Department of Public Instruction

Drug and Alcohol Education:
A Shared Responsibility

A recent survey of seventh through twelfth graders in North Carolina, conducted by the staff of the Alcohol and Drug Defense Program, indicated that many students are experimenting with alcohol and a variety of other drugs. In these grade levels, alcohol was the most widely used drug (59.6%); however, other drugs such as tobacco, marijuana and inhalants were also used by more than twenty per cent of the student body. The effects of drugs on student behavior are seen in many middle and high schools throughout the nation. Students experimenting with drugs often have difficulty achieving in academic settings and may become part of the group labeled as "at-risk."

Educators have an opportunity and a responsibility to implement programs that not only provide information about a variety of drugs but also develop the social skills necessary to make sound decisions. These skills are effectively acquired in a sequential and developmental K-12 curriculum and reinforced in a variety of subject areas. A K-12 curriculum has been developed and is contained in the Healthful Living Teacher Handbook under the instructional areas of "Chemicals and Substance Abuse," "Mental Health," and "Consumer Health." Many of the objectives listed under these areas may be used to reinforce, expand and enhance other content areas because the integration of several subject areas provides a very rich and meaningful curriculum. It may be helpful for teachers from all subject areas to review the objectives for their specific grade levels contained in the Healthful Living Teacher Handbook and identify appropriate topics or skill areas. For example, an American History teacher might include an objective from the mental health section that addresses values as standards of behavior. Values about alcohol and drugs could be explored from the vantage point of economics or from the perspective of government regulation. Teachers of communication skills have many rich topics for discussions, writing assignments and debates. For example, a well-prepared debate about banning smoking on short or long air flights would not only provide a great deal of information but would allow students an opportunity to analyze a current topic of public concern. Teachers of science, driver's education, psychology, and other subject areas will also find meaningful topics for their specific areas.

There are many ways to provide for integration and teachers may want to brainstorm ideas with others on their grade level. One approach might be to list major topics from a specific subject area and review the grade level objectives from the Healthful Living Teacher Handbook. Teachers could identify complimentary areas, topics or objectives and discuss activities, materials and other resources that would be appropriate.

For more information, contact your regional Alcohol and Drug Defense consultant at the following locations:

Region 1, P.O. Box 1028
Williamston 27892
(919) 792-5166

Region 2, 612 College Street
Jacksonville 28540
(919) 455-8100

Region 3, 2431 Crabtree Blvd.
Raleigh 27604
(919) 733-2864

Region 4, P.O. Box 786
Carthage 28327
(919) 947-5871

Region 5, P.O. Box 21889
Greensboro 27420-1889
(919) 334-5764

Region 6, 2400 Hildebrand Street
Charlotte 28216
(704) 392-0378

Region 7, 303 E. Street
North Wilkesboro 28659
(919) 667-2191

Region 8, 514 E. Marshall St.
Waynesville 28786
(704) 452-0363

State Office: Alcohol and Drug Defense Program, North Carolina Department of Public Instruction, Education Annex II, Raleigh, NC 27603-1712 (919) 733-4615

Alcohol and drug education is everyone's responsibility. The curriculum is broad and encompasses content as well as the social skill development necessary to solve problems and make sound decisions. The knowledge base and the social skills take many years to develop. They are most effectively taught through a cooperative effort, and the results last a lifetime.

Contact your regional ADD Consultant for more information regarding the implementation of a comprehensive curriculum in your school.

Add Bulletin

Alcohol and Drug Defense Program

North Carolina Department of Public Instruction

Alcohol

In the United States more than 100 million adults drink alcohol. The average age that one first tries alcohol is 12, and many Americans have their first drink earlier while still in elementary school. Most drinkers are able to control their use of alcohol; however, 10 to 13 million adults are problem drinkers. Alcohol use can lead to serious physical, emotional, and mental problems. It can damage a persons's family life, school and professional career.

Alcohol depresses, or slows the nervous system and dulls the brain and senses. Like food, alcohol is used by the body. It is combined with oxygen to give off energy, but unlike food, alcohol does not have to be digested. It passes directly through the walls of the stomach and small intestine and enters the bloodstream, where the blood carries the alcohol to the brain, heart, liver and all other parts of the body. Drinking a small amount of alcohol relaxes the body and produces a sense of well-being; however, as the alcohol level rises, the body functions rapidly become depressed.

Alcohol begins to affect the higher centers of the brain almost as soon as it is consumed. These centers control a person's ability to think, speak, reason, concentrate, remember, make judgements, and maintain control over moods and behavior. These centers also control a person's ability to perform certain physical tasks and to react quickly to stimulation. Alcohol dims and blurs vision; affects a person's hearing; and affects the senses of smell, touch and taste. Because alcohol affects physical performance, driving and drinking is particularly dangerous. In fact, almost 10,000 young people under the age of 25 die each year in alcohol-related traffic accidents.

Alcohol irritates and inflames parts of the digestive system, and for heavy drinkers, alcohol may contribute to cancer of the mouth, throat and esophagus. Alcohol also has damaging effects on the liver, kidneys, heart and unborn children whose mothers drink. Alcohol should never be mixed with other depressive drugs. The combination can be lethal.

Alcohol is the most widely used mind-altering drug among teenagers, and is responsible for thousands of teenage suicides, drownings and homicides. Teenage boys seem to drink more heavily than girls; however, drinking among teenage girls is increasing. The National Institute on Alcohol Abuse and Alcoholism states that about 3.3 million teenagers aged 14 to 17 show signs that may lead to the development of alcoholism, and that many teenagers have alcohol-related family, legal and school problems. It may take years of steady drinking for an adult to become an alcoholic; however, it may only take months for a teenager to develop alcoholism.

For more information, contact your regional Alcohol and Drug Defense consultant at the following locations:

Region 1, P.O. Box 1028
Williamston 27892
(919) 792-5166

Region 2, 612 College Street
Jacksonville 28540
(919) 455-8100

Region 3, 2431 Crabtree Blvd.
Raleigh 27604
(919) 733-2864

Region 4, P.O. Box 786
Carthage 28327
(919) 947-5871

Region 5, P.O. Box 21889
Greensboro 27420-1889
(919) 334-5764

Region 6, 2400 Hildebrand Street
Charlotte 28216
(704) 392-0378

Region 7, 303 E. Street
North Wilkesboro 28659
(919) 667-2191

Region 8, 514 E. Marshall St.
Waynesville 28786
(704) 452-0363

State Office: Alcohol and Drug Defense Program, North Carolina Department of Public Instruction, Education Annex II, Raleigh, NC 27603-1712 (919) 733-6615

While alcohol is legal for use by those over the age of 21, it is still America's most abused drug. The problems other drugs cause society pale in comparison to the problems caused by alcohol. Alcohol is also the drug most often abused by young people under the legal drinking age. If you would like more information or training about alcohol abuse, contact your regional ADD Consultant or call the ADD office in Raleigh at (919) 733-6615.

Don Williams
N. C. A&T University
Greensboro, North Carolina

Bulletin

Alcohol and Drug Defense Program

North Carolina Department of Public Instruction

AMPHETAMINES

Last year, the second bulletin addressed the issue of cocaine/crack. With all of the recent attention on crack, you may want to review that publication again. Our second report this year is on the general area of stimulant drugs, of which cocaine is one example.

Amphetamines include three closely related drugs — amphetamine, dextroamphetamine, and methamphetamine. Amphetamine was first used clinically in the mid-1930's to treat narcolepsy, a rare disorder resulting in an uncontrollable desire for sleep. Amphetamines were sold without prescription for a time in inhalers and over-the-counter preparations. Abuse of the inhalers became popular among teenagers and prisoners. In the late 60's and early 70's housewives, students, and truck drivers were among those who used amphetamines orally in excessive amounts. Clandestine laboratories produced vast quantities of amphetamines for what was known in the drug culture as "speed freaks". These individuals injected the drug and were known for their bizarre and violent behavior. Recognition of the deleterious effects of amphetamines and the limited therapeutic value has led to a marked reduction in their use by the medical profession. The medical use is now limited to treatments of narcolepsy, minimal brain dysfunction (MBD) in children, and for short-term treatment of obesity. Despite broad recognition of the risks, clandestine laboratories produce vast quantities of amphetamines, particularly methamphetamines, for distribution on the illicit market. This clandestinally produced amphetamine is sold as a white or beige powder and is usually intravenously injected by users. It is referred to on the streets by the slang name "crank". Whereas a prescribed dose might be between 2.5 and 15 mg. per day, those on a "crank" binge have been known to inject as much as 1,000 mg. every two or three hours.

Amphetamines increase heart and breathing rates and blood pressure, dilate pupils, and decrease appetite. In addition, the user can experience a dry mouth, sweating, headache, blurred vision, dizziness, sleeplessness, and anxiety. Extremely high doses can cause people to flush or become pale; they can cause a rapid or irregular heart beat, tremors, loss of coordination, and even physical collapse. An amphetamine injection creates a sudden increase in blood pressure that can cause death from stroke, very high fever, or heart failure.

People who use large amounts of amphetamines over a long period of time can develop an amphetamine psychosis: seeing, hearing, and feeling things that do not exist (hallucinations), having irrational thoughts or beliefs (delusions), and feeling as though people are out to get them (paranoia). People in this extremely suspicious state frequently exhibit violent behavior. Persons abusing amphetamines are considered by law enforcement to be the most potentially dangerous of any other drug abusers.

Many users of amphetamines report a psychological dependence, a feeling that the drug is essential to their normal functioning. These users continue to use amphetamines to avoid the "down" mood they get when the drugs' effects wear off. In addition, people who use amphetamines regularly may develop tolerance — the need to take larger doses to get the same initial effects.

For more information, contact your regional Alcohol and Drug Defense consultant at the following locations:

Region 1, P.O. Box 1028
Williamston 27892
(919) 792-5166

Region 2, 612 College Street
Jacksonville 28540
(919) 455-8100

Region 3, 2431 Crabtree Blvd.
Raleigh 27604
(919) 733-2864

Region 4, P.O. Box 786
Carthage 28327
(919) 947-5871

Region 5, P.O. Box 21889
Greensboro 27420-1889
(919) 334-5764

Region 6, 2400 Hildebrand Street
Charlotte 28216
(704) 392-0378

Region 7, 303 E. Street
North Wilkesboro 28659
(919) 667-2191

Region 8, 514 E. Marshall St.
Waynesville 28786
(704) 452-0363

State Office: Alcohol and Drug Defense Program, North Carolina Department of Public Instruction, Education Annex II, Raleigh, NC 27603-1712 (919) 733-6615

As is the case with sedatives-hypnotics in North Carolina, there are many "look-alike" stimulants. These are drugs manufactured to look like real amphetamines and mimic their effects. The drugs usually contain varying amounts of caffeine, ephedrine, and phenylpropanolamine. These three legal substances are stimulants and are often found in over-the-counter preparations, such as diet pills and decongestants. Some negative effects of look-alikes, especially when taken in large quantities, are similar to the effects of amphetamines. These effects include anxiety, restlessness, weakness, throbbing headache, difficulty breathing and a rapid heartbeat. There have been several reports of severe high blood pressure, leading to cerebral hemorrhaging and death. One of the greatest dangers is that these drugs are easily available and are being used by young people and others who do not normally abuse drugs. Once people start using these drugs, they may be at high risk for using other drugs.

The Physicians Desk Reference (PDR), a book with extensive information regarding prescribed drugs, is useful in identifying tablets and capsules. Whenever there is any question as to the drug, local police authorities or the State Bureau of Investigation should be consulted. Sale of amphetamines is a felony punishable by not more than ten years imprisonment or a fine or both at the discretion of the court. Possession is a misdemeanor punishable by not more than two years imprisonment or fined not more than two thousand dollars or both at the discretion of the court.

Supervisor C. J. Overton, III
N.C. State Bureau of Investigation

For more information or help with prevention, identification, and intervention services, contact the Alcohol and Drug Defense Program.

ADD Bulletin

Alcohol and Drug Defense Program

North Carolina Department of Public Instruction

Cocaine

The biggest concern regarding drug use in 1985 is the increasing use of cocaine by young people. In an attempt to provide factual information to you, this ADD bulletin on cocaine was prepared by the State Bureau of Investigation.

Cocaine, the most potent stimulant of natural origin is extracted from the leaves of the Coca plant which is cultivated in the Andean highlands of South America.

The illicit cocaine is then smuggled into the United States by air and sea. Cocaine is distributed as a white crystalline powder. It is most commonly administered by "snorting" through the nasal passages. Symptoms of repeated use in this manner may resemble the congested nose of a common cold. Recurrent users often resort to larger doses at shorter intervals until their lives are taken over by their habit. Anxiety, restlessness, and extreme irritability may indicate the onset of a toxic psychosis similar to paranoid schizophrenia. At one time cocaine was not believed to be addictive and was viewed as a "recreational drug". It is now believed by many doctors to be physically addicting and is definitely one of the most psychologically addicting drugs known to man. In laboratory experiments it is the only drug that has been found laboratory animals will choose over either food or sex. Because of its availability and potential for abuse it is the most dangerous illicit drug on the streets of North Carolina.

North Carolina first experienced large volumes of cocaine trafficking in the late 1970's. It has been rapidly escalating and in 1985 cocaine usage reached epidemic proportions in North Carolina. The number of cocaine overdose deaths has increased dramatically over the last two years.

Cocaine abuse appears in all segments of society. Almost daily the media recounts problems that businessmen, athletes, attorneys, theater people and other professionals are experiencing with cocaine habits. Our children are becoming exposed to cocaine in abundant supplies in our high schools throughout North Carolina. Many productive lives are being destroyed by cocaine habits which are so expensive to maintain that only by engaging in a crime can a person keep up their habit.

For more information, contact your regional Alcohol and Drug Defense consultant at the following locations:

Region 1, P.O. Box 1028
Williamston 27892
(919) 792-5166

Region 2, 612 College Street
Jacksonville 28540
(919) 455-8100

Region 3, 2431 Crabtree Blvd.
Raleigh 27604
(919) 733-2864

Region 4, P.O. Box 786
Carthage 28327
(919) 947-5871

Region 5, P.O. Box 21889
Greensboro 27420-1889
(919) 334-5764

Region 6, 2400 Hildebrand Street
Charlotte 28216
(704) 392-0378

Region 7, 303 E. Street
North Wilkesboro 28659
(919) 667-2191

Region 8, 514 E. Marshall St.
Waynesville 28786
(704) 452-0363

State Office: Alcohol and Drug Defense Program, North Carolina Department of Public Instruction, Education Annex II, Raleigh, NC 27603-1712 (919) 733-6615

Recently a new form of cocaine abuse has appeared in our northern cities and we anticipate it becoming a problem in North Carolina. Street level cocaine is being converted to a base form and is being sold at a price range of from $5. to $20. per vial depending upon the quantity. Known as "crack" this new form of cocaine seems to target adolescents as its victims. "Crack" reportedly has a strong and euphoric effect upon its users. When the substance is inhaled with marihuana or tobacco the "rush" is said to last from five to twenty minutes. Its use is frequently accompanied by hyperactive and potentially violent behavior. Adolescents who have been introduced to smoking "crack" often feel a powerful drive to repeat the experience and develop an obsession with the drug within one or two months. The amount and frequency of use escalates. Many were smoking it daily and resorted to stealing from parents and friends or to dealing drugs to afford the cost of their own habit. Within three to five months of starting "crack" these adolescents were suffering from a wide variety of drug-induced symptoms, including rapid weight loss coupled with extreme depression, dysphoria, school absences, chest congestion with gray or black sputum, chronic coughing, sore throat, hoarseness, and parched tongue and lips.

C. J. Overton, III
N.C. State Bureau of Investigation

If you want some special assistance with this growing problem, please call upon us. The ADD Program is available to provide consultation and training in the areas of prevention, early identification, and intervention services.

Add Bulletin
Alcohol and Drug Defense Program

North Carolina Department of Public Instruction

Confidentiality Requirements for School Personnel

Confidentiality requirements as they relate to school personnel and student alcohol and drug use are complex. However the complexity of these issues should not keep school personnel from acting in the behalf of students with problems. Existing laws *do* provide guidelines, that if followed, should protect school personnel from libel suits and most importantly, assist students in need.

TREATMENT vs. EDUCATION

There are stringent Federal laws that protect a person *in treatment* for alcohol and drug problems from unauthorized disclosure of information without informed consent. The laws apply only after a person is diagnosed as having an alcohol or drug problem and is admitted to treatment. The school is not a treatment agency and therefore does not fall under these Federal guidelines. The school is an educational institution and the services it provides are primarily educational in nature. However, when a student enters a treatment program, the guidelines apply. If the school has any reasons to maintain treatment records, these records should not be filed with the general educational records. It is important that schools distinguish between educational and treatment records.

ASSISTING STUDENTS WITH PROBLEMS

If a student seeks help with an alcohol or other drug problem, the following general guidelines should apply. The staff member contacted by the student should protect the confidentiality of the student by restricting discussion of the case to *only those who have "a need to know" about the case in order to assist the student.* The staff member may seek advice from the school couselor. The school counselor may contact the Alcohol and Drug Defense Program (ADD) consultant for help in planning services for the student if he/she is unfamiliar with local resources. The ADD consultant does not need to know the identity of the student, only the particulars of the case. In this manner, the student's confidentiality is protected. The ADD consultant is thoroughly familiar with all the alcohol and drug resources in the region and will be a valuable resource in helping plan appropriate services. The student should be advised about services that are available and urged to seek help. Parental involvement should be encouraged, but parents or individuals other than the ADD consultant and the school counselor *should not be notified without the written consent of the student.* North Carolina Law 90-21.5 provides that minors may seek treatment for abuse of controlled substances or alcohol without parental consent.

For more information, contact your regional Alcohol and Drug Defense consultant at the following locations:

Region 1, P.O. Box 1028
Williamston 27892
(919) 792-5166

Region 2, 612 College Street
Jacksonville 28540
(919) 455-8100

Region 3, 2431 Crabtree Blvd.
Raleigh 27604
(919) 733-2864

Region 4, P.O. Box 786
Carthage 28327
(919) 947-5871

Region 5, P.O. Box 21889
Greensboro 27420-1889
(919) 334-5764

Region 6, 2400 Hildebrand Street
Charlotte 28216
(704) 392-0378

Region 7, 303 E. Street
North Wilkesboro 28659
(919) 667-2191

Region 8, 514 E. Marshall St.
Waynesville 28786
(704) 452-0363

State Office: Alcohol and Drug Defense Program, North Carolina Department of Public Instruction, Education Annex II, Raleigh, NC 27603-1712 (919) 733-6615

POSSESSION OR USE BY STUDENTS

In situations involving actual use or possession by students, the same general guidelines apply. Knowledge of the situation should be restricted to only those with the need to know. In cases of use or possession, information should be limited to the student, staff member, counselor, principal and superintendent. The ADD consultant should be contacted if there is a question about procedure. Whether law enforcement and parents are involved depends on the particulars of each case.

POLICIES AND PROCEDURES

Fear of liability is no excuse for not assisting a student in need. All staff should be educated about their rights and responsibilities in alcohol and drug use situations. The best method of assisting students and protecting school staff is to have written policies and procedures that detail how alcohol and drug problems are to be addressed. If you would like to have more information about model policies and procedures or would like professional assistance in reviewing your current policies, please contact your ADD consultant.

Add Bulletin

Alcohol and Drug Defense Program

North Carolina Department of Public Instruction

DEPRESSANTS (Sedatives-Hypnotics)

Sedative-hypnotics are drugs which depress or slow down the body's normal functions. Taken as prescribed by a physician they may be helpful for the relief of anxiety, emotional tension and to induce sleep in instances of insomnia. The two major categories of sedative-hypnotics are barbiturates and benzodiazepines. Secobarbital (Seconal) and Pentobarbital (Nembutal) are well-known barbiturates. Diazepam (Valium) and Chlordiazepoxide (Librium) are examples of benzodiazepines. A few sedative-hypnotics do not fit in either category. They include methaqualone (Quaalude), ethchlorvynol (Placidyl), chloral hydrate (Noctes) and meprobamate (Equanil). All of these drugs can be extremely dangerous when they are not taken according to a physician's instructions.

Sedative-hypnotics can cause both physical and psychological dependence. Tolerance to the intoxicating effects develops rapidly, leading to a progressive narrowing of the margin of safety between an intoxicating and lethal dose. The abrupt cessation of large doses of these drugs may result in physical withdrawal symptoms ranging from restlessness, insomnia and anxiety, to convulsions and death.

The use of alcohol in conjunction with sedative-hypnotics multiplies the effects of the drugs and greatly increases the risk of death. Overdose deaths can occur when barbiturates and alcohol are used together, either deliberately or accidentally. Barbiturate overdose is a factor in nearly one-third of all reported drug-related deaths.

Sedative-hypnotics get in the hand of the abuser in many different ways. Some of the more common are: (1) through physicians who write prescriptions for money or other favors without regard to medical necessity (script doctors); (2) persons who use an existing medical condition or fake a condition to trick the physician into writing a prescription for a specific drug (doctor shopping); (3) prescription forgeries; (4) drug store robberies; and (5) by stealing legitimately prescribed drugs (i.e. children taking drugs from their parents' medicine cabinets).

In North Carolina there are also many different types of sedative-hypnotic "look-alikes". These are pills manufactured to look like real sedative-hypnotics and mimic their effects. They usually contain over-the-counter drugs such as antihistamines and decongestants, which tend to cause drowsiness. The negative effects can include nausea, stomach cramps, lack of coordination, temporary memory loss, becoming out of touch with surroundings, and anxious behavior.

A sedative-hypnotic user will display behavior similar to someone under the influence of alcohol. Small amounts produce calmness and relaxed muscles. Somewhat larger doses can cause slurred speech, staggering gait, poor judgement, and slow uncertain reflexes. These effects make it dangerous to drive a car or operate machinery.

For more information, contact your regional Alcohol and Drug Defense consultant at the following locations:

Region 1, P.O. Box 1028
Williamston 27892
(919) 792-5166

Region 2, 612 College Street
Jacksonville 28540
(919) 455-8100

Region 3, 2431 Crabtree Blvd.
Raleigh 27604
(919) 733-2864

Region 4, P.O. Box 786
Carthage 28327
(919) 947-5871

Region 5, P.O. Box 21889
Greensboro 27420-1889
(919) 334-5764

Region 6, 2400 Hildebrand Street
Charlotte 28216
(704) 392-0378

Region 7, 303 E. Street
North Wilkesboro 28659
(919) 667-2191

Region 8, 514 E. Marshall St.
Waynesville 28786
(704) 452-0363

State Office: Alcohol and Drug Defense Program, North Carolina Department of Public Instruction, Education Annex II, Raleigh, NC 27603-1712 (919) 733-6615

The Physicians Desk Reference (PDR), a book with extensive information regarding prescribed drugs, is useful in identifying tablets and capsules. Whenever there is any question as to the drug, a pharmacist, local police authorities, the local drug treatment program, or the State Bureau of Investigation should be consulted. Sale of sedative-hypnotics is a felony punishable by not more than five (5) years imprisonment or a fine or both at the discretion of the court. Possession is a misdemeanor punishable by not more than two years imprisonment or fined not more than two thousand dollars or both at the discretion of the court.

Supervisor C. J. Overton, III
N.C. State Bureau of Investigation

School age children are often users of "look-alike" drugs that produce the symptoms described above. Contact your ADD Consultant for more information or help.

Add Bulletin

Alcohol and Drug Defense Program

North Carolina Department of Public Instruction

Drugs and You

Everyone knows that the drug problem is serious. It is not the kind of problem that can be easily eradicated. The reasons for drug use are extremely complex and the ways to prevent abuse or to intervene with youth who are in trouble is often perplexing and confusing.

We know that if we don't do something, the risks for our children increase. Drug use is killing our children. Motorvehicle accidents involving alcohol are the leading cause of death for those in the 15-19 age group. The use of illegal drugs has steadily continued with a recent increase in the use of cocaine by young people.

Most adults (parents or professionals) know very little about drug use. The fact that our children (users and non-users) do know a lot often keeps us from discussing the concerns that we have. Consequently, adults need to learn about drugs, adolescent development, ways to build trust, etc. Children want to talk to adults about life. They need to trust, and they need to have a clear framework within which to live. There are a number of critical early warning signs that adults should look for with youth. These should not be used to accuse, but should be viewed as possible indicators of problems.

- Low Self-Esteem
- Abrupt Change in Behavior
- Personality Changes—Temper Outbursts
- Other Kids Talking About a Friend's Use
- Decreased Interest in School, Hobbies
- Building Life Around Drug Use
- Arguments with Family, Friends
- Change of Peer Group/Friends
- Alcohol/Drug Arrest
- Lying
- Minor Accidents
- Sleeping in Class
- Falling Grades
- Withdrawal
- Tardiness/Truancy
- Alibis
- Alcohol on Breath

If any combination of these symptoms occurs, it is time for a concerned talk with the child. Parents can consult with school personnel for help and vice-versa. The earlier a child can be reached, the more effective the intervention and subsequent resolution of problems. Drug abuse is a *primary* problem. It will *not* go away *without* help.

For more information, contact your regional Alcohol and Drug Defense consultant at the following locations:

Region 1, P.O. Box 1028
Williamston 27892
(919) 792-5166

Region 2, 612 College Street
Jacksonville 28540
(919) 455-8100

Region 3, 2431 Crabtree Blvd.
Raleigh 27604
(919) 733-2864

Region 4, P.O. Box 786
Carthage 28327
(919) 947-5871

Region 5, P.O. Box 21889
Greensboro 27420-1889
(919) 334-5764

Region 6, 2400 Hildebrand Street
Charlotte 28216
(704) 392-0378

Region 7, 303 E. Street
North Wilkesboro 28659
(919) 667-2191

Region 8, 514 E. Marshall St.
Waynesville 28786
(704) 452-0363

State Office: Alcohol and Drug Defense Program, North Carolina Department of Public Instruction, Education Annex II, Raleigh, NC 27603-1712 (919) 733-6615

If you, your neighbors, your church group, etc. want to learn more about how you can get involved to prevent drug abuse or to intervene in already existing situations, you need to call your child's teacher, principal, local substance abuse agency, minister, etc.

The Alcohol and Drug Defense Program is working to help school professionals address the drug problem. If we can be of help, call the office nearest you. Drug abuse is a big problem. We cannot reduce the consequences of drugs without you. Please get involved today.

Add Bulletin

Alcohol and Drug Defense Program

North Carolina Department of Public Instruction

Fetal Alcohol Syndrome

The fetal alcohol syndrome (FAS) is a pattern of mental, physical and behavioral defects that may occur in the unborn child when its mother drinks during pregnancy. Thus, alcohol can be classified as a teratogenic drug, meaning that prenatal exposure can cause adverse effects to the offspring.

When a pregnant woman drinks, the alcohol travels across the placenta and through the baby's bloodstream in the same concentrations as it does through the mother's. A developing fetus' liver is only half as effective at burning off alcohol as the adult liver, so the alcohol remains in the fetus' system longer.

It is not clear at this time how much alcohol intake produces FAS. The full syndrome has been clearly linked to heavy drinking (6 drinks a day on an average). Mothers who drink relatively moderate amounts of alcohol (1-4 drinks a day on an average) may increase the risk of miscarriage, lowered birth weight, unusual physical development, lowered I.Q., and central nervous system damage.

The average daily consumption of small amounts of alcohol may not be as important as the effects of binge drinking because FAS is produced when there is a high blood alcohol level during critical times of fetal development, especially in the early stages.

Just as there appears to be no clearly defined safe dosage level, there appears to be no time that it is safe to drink during pregnancy. Organ damage may be caused during the first trimester; increased risk of miscarriage occurs during the second trimester; and alcohol may interfere with the fetus' rapid growth, especially in the brain during the third trimester. For these reasons, the following recommendations regarding drinking during pregnancy have been made:

—The National Council on Alcoholism and the National Foundation — March of Dimes advocate that pregnant women not drink at all.

—The U.S. Surgeon General recommends that pregnant women and women who want to become pregnant, refrain completely from drinking alcoholic beverages.

Mothers are also encouraged not to drink while breast-feeding because alcohol readily enters breast milk and is transmitted to the nursing infant.

Fetal Alcohol Syndrome is characterized by mental, physical, and behavioral defects. The physical congential birth defects include:

—low birth weight, inability to catch up throughout developmental period;

—facial malformations: small head circumference, misshapen eyes, sunken nasal bridge, flattened midface;

For more information, contact your regional Alcohol and Drug Defense consultant at the following locations:

Region 1, P.O. Box 1028
Williamston 27892
(919) 792-5166

Region 2, 612 College Street
Jacksonville 28540
(919) 455-8100

Region 3, 2431 Crabtree Blvd.
Raleigh 27604
(919) 733-2864

Region 4, P.O. Box 786
Carthage 28327
(919) 947-5871

Region 5, P.O. Box 21889
Greensboro 27420-1889
(919) 334-5764

Region 6, 2400 Hildebrand Street
Charlotte 28216
(704) 392-0378

Region 7, 303 E. Street
North Wilkesboro 28659
(919) 667-2191

Region 8, 514 E. Marshall St.
Waynesville 28786
(704) 452-0363

State Office: Alcohol and Drug Defense Program, North Carolina Department of Public Instruction, Education Annex II, Raleigh, NC 27603-1712 (919) 733-6615

96

—CNS dysfunction, alcohol withdrawal symptoms at birth, poor sucking response, sleep disturbances, irritability, short attention span and hyperactivity;

—malformations in major organs, muscle problems, joint and skeletal defects, genital defects and kidney abnormalities.

The occurrence of mental handicaps is another debilitating aspect of FAS. FAS is the third leading recognizable cause of mental retardation in the United States. Research indicates that in general, the most severely affected children with FAS have the lowest intelligence.

Behavioral defects in children born with FAS include: head and body rocking, stereotyped behaviors, clumsiness, difficulty with peers, and management problems.

Prenatal alcohol exposure produces a spectrum of offspring effects. Children born to alcoholic mothers can have a range of alcohol-related effects. If a child exhibits some, but not all of the symptoms, he is generally referred to as having "fetal alcohol effects."

A child exhibiting "fetal alcohol effects" may fall within the normal range of intelligence. However, the child could manifest a variety of maladaptive behaviors and subtle CNS effects, including learning disabilities, speech and language problems, hyperactivity, and attentional problems.

Prevention strategies for eliminating FAS include: mass media campaigns, consultation and intervention by health care providers, and community-based education programs. It has been suggested that FAS education begin as early as elementary school and continue through college. Such an approach would insure that young girls would have the vital information needed at an age when their attitudes toward alcohol were forming.

For more information on Fetal Alcohol Syndrome, contact your Regional ADD Contact, your local Mental Health Center or call the ADD Raleigh office at 733-6615.

Please share this bulletin with parents

Add Bulletin

Alcohol and Drug Defense Program

North Carolina Department of Public Instruction

Hallucinogens

Hallucinogenic drugs, both natural and synthetic, are substances that distort the perception of objective reality. In an earlier bulletin, we discussed the powerful hallucinogen LSD. In this issue we will discuss other hallucinogens that may be encountered in North Carolina.

The primary active ingredient of the Peyote Cactus is the hallucinogen, Mescaline. It is derived from the fleshy parts or buttons of this plant. The buttons are approximately the size of a large marble and are usually brown in color. From the earliest recorded time, Peyote has been used by Indians in Northern Mexico as a part of traditional religious rites. Unsually ground into a powder, Peyote is taken orally. Mescaline can also be produced synthetically. A dose of 350 to 500 mg of Mescaline produces illusions and hallucinations lasting from 5 to 12 hours.

Many chemical variations of Mescaline and Amphetamine have been synthesized in the laboratory. At various times many of these variations have won acceptance in the drug culture. Two of the most abused in North Carolina are MDA (3, 4-methylenedioxyamphetamine and MMDA (3-methoxy 4, 5-methylenedioxyamphetamine). They are usually found as a white to tan powder and may be taken orally, "snorted,"or intravenously. Because they are produced in clandestine laboratories, they are seldom pure and the doses may be expected to vary considerably.

Like the Peyote Cactus, Psilocybin mushrooms have been used for centuries in traditional Indian rites. When they are eaten, these mushrooms affect mood and perception in a manner similar to Mescaline and LSD. Their active ingredients, Psilocybin and Psilocyn, are chemically related to LSD. The mushrooms are dark brown in color.

Many drug-treatment professionals consider Phencyclidine (PCP) to pose greater risks to the user than any other illegal drug. Although PCP is not a true hallucinogen, it is usually placed in this class because it sometimes causes hallucinations. PCP is most often called "Angel Dust." It was first developed as an anesthetic in the 1950's but was soon taken off the market for human use because of its side effects of confusion and delirium. In the 1960's it became available fou use in veterinary medicine. In the late 1970's, commercial production of Phencyclidine was halted. All Phencyclidine on the U.S. illicit market is now produced in clandestine laboratories.

PCP is available in a number of forms. It can be a pure, white crystal-like powder, a tablet, or a capsule. It can be swallowed, smoked, sniffed or injected. PCP is sometimes sprinkled on marijuana or parsley and smoked. It is often sold as Mescaline, THC, or other drugs. Sometimes it may not even be PCP, but a lethal by-product of the drug. Since it is manufactured illegally, users can never be sure what they are buying.

For more information, contact your regional Alcohol and Drug Defense consultant at the following locations:

Region 1, P.O. Box 1028
Williamston 27892
(919) 792-5166

Region 2, 612 College Street
Jacksonville 28540
(919) 455-8100

Region 3, 2431 Crabtree Blvd.
Raleigh 27604
(919) 733-2864

Region 4, P.O. Box 786
Carthage 28327
(919) 947-5871

Region 5, P.O. Box 21889
Greensboro 27420-1889
(919) 334-5764

Region 6, 2400 Hildebrand Street
Charlotte 28216
(704) 392-0378

Region 7, 303 E. Street
North Wilkesboro 28659
(919) 667-2191

Region 8, 514 E. Marshall St.
Waynesville 28786
(704) 452-0363

State Office: Alcohol and Drug Defense Program, North Carolina Department of Public Instruction, Education Annex II, Raleigh, NC 27603-1712 (919) 733-6615

PCP can produce violent or bizarre behavior. This behavior can lead to death from drownings, burns, falls and automobile accidents. Regular PCP use affects memory, perception, concentration, and judgement. Users may show signs of paranoia, fearfulness and anxiety. During these times, some users may become aggressive while others may withdraw and have difficulty communicating. Long-term PCP users report memory and speech difficulties, as well as hearing voices or sounds which do not exist.

The physical effects of PCP depend on how much is taken, the way it is used, and the individual taking the drug. Effects include increased heart rate and blood pressure, flushing, sweating, dizziness, and numbness. When large amounts of PCP are taken, it can also cause death from repeated convulsions, heart and lung failure, or ruptured blood vessels in the brain.

In North Carolina possession of any of these drugs is a felony, punishable by up to five years in prison. Conviction of a felony prohibits an individual from exercising his/her right to vote and from pursuing many careers.

Supervisor C.J. Overton, III
NC State Bureau of Investigation

Drug use continues to be a major problem among school-age youth. Contact the ADD Program for help in expanding your prevention and intervention efforts, or if you need more specific information.

Add Bulletin

Alcohol and Drug Defense Program

North Carolina Department of Public Instruction

Inhalants

One of the continued drug problems among adolescents has been the abuse of a very dangerous group of chemicals. The following information has been provided by one of our nation's leading pharmacologists.

In a complex highly technical society such as ours, there is easy availability of substances to alter our mood. With most chemicals of abuse, we have developed some level of control over their availability. However, when one wants to experience a high — no matter the consequences — industrial chemicals, fuels, and cleaning solutions are easily accessible. These chemicals are volatile, and the fumes are inhaled to alter mood. The term "Inhalant Abuse" was coined to describe the use of these volatile substances for the purpose of intoxication.

Today, these so-called "sniffers" comprise a small, yet significant, part of the substance-abuse problem in America. The use of inhalants increased in the 1970's and has decreased slightly in the 1980's. However, it appears that their use has increased among ethnic minorities and lower socioeconomic groups. They are likely to be young adolescents, with a 3-to-1 ratio of males to females.

The Substances

Most of these inhalants are volatile hydrocarbons: They are gases at room temperature or turn to gas when exposed to air. They are usually fast drying glues and cements, paints, lacquers and varnishes, as well as thinners and removers, lighter and dry cleaning fluids, kerosene, gasoline, nail polish remover, and various aerosols. The active chemicals include toluene, benzene, acetone, naphtha, cyclohexane, carbon tetrachloride, chloroform, ethyl ether, various alcohols, ketones, acetates. Some of the more recent additions to this list include nitrous oxide, freon, and butyl nitrate.

Method of Use

Inhalation is one of the most rapid methods of introducing a drug into the brain. The product is sniffed directly in the lungs either from the container or after placing it in a paper bag, or in the case of a pressurized gas, it may be introduced into a balloon before inhaling.

Reason for Use

As with most drugs of abuse, inhalants are consumed due to their effects on brain functioning. While their pharmacology is poorly understood and varies as to the chemical involved, they produce an increased sense of well-being, a reduction of inhibitions, and an elevated mood. Many of the effects are similar to that of alcohol. Higher doses produce laughing and giddiness, as well as time and space distortions.

For more information, contact your regional Alcohol and Drug Defense consultant at the following locations:

Region 1, P.O. Box 1028
Williamston 27892
(919) 792-5166

Region 2, 612 College Street
Jacksonville 28540
(919) 455-8100

Region 3, 2431 Crabtree Blvd.
Raleigh 27604
(919) 733-2864

Region 4, P.O. Box 786
Carthage 28327
(919) 947-5871

Region 5, P.O. Box 21889
Greensboro 27420-1889
(919) 334-5764

Region 6, 2400 Hildebrand Street
Charlotte 28216
(704) 392-0378

Region 7, 303 E. Street
North Wilkesboro 28659
(919) 667-2191

Region 8, 514 E. Marshall St.
Waynesville 28786
(704) 452-0363

State Office: Alcohol and Drug Defense Program, North Carolina Department of Public Instruction, Education Annex II, Raleigh, NC 27603-1712 (919) 733-6615

100

Dangers

The use of these solvents often produces confusion, drunkenness, slurred speech, numbness, and muscular incoordination. In higher doses, a general sedative-anesthetic effect takes over and drowsiness, stupor, respiratory depression, and unconsciousness may occur. Suffocation may result when the user faints and the mouth remains covered by a bag. Reports of "Sudden Sniffing Death" (SSD) have occured that probably results from cardiac arrhythmias. Long-term use may damage physical and intellectual functioning. With so many varying products on the market, prediction of long-term effects is almost impossible.

Dennis F. Moore, Pharm. D.
Woodhill Treatment Center
Asheville, North Carolina

Should you need special assistance, call your regional ADD consultant. Early identification and intervention is critical with these substances to prevent permanent damage.

Add Bulletin

Alcohol and Drug Defense Program

North Carolina Department of Public Instruction

Legal Information for School Personnel Regarding Student Alcohol or Drug Use

During the course of the school year it is very likely that school personnel will encounter students who are using alcohol and drugs. In spite of the likelihood of such events, there generally is little advance planning on how these issues will be handled. Decisions about the consequences of alcohol and drug use by students often are arbitrary and inconsistent.

This is unfortunate. Current laws provide schools with enough flexibility to develop sound, consistent methods for dealing with student alcohol and drug use. The following information will attempt to give school personnel some guidelines. It should not be taken as strict legal advice, but as advisory in nature. The law is rapidly changing and if there is *any question* about the legalities involved in a particular case, the school attorney should be consulted.

THE SCHOOL'S PRIMARY ROLE IN ALCOHOL AND DRUG SITUATIONS

First and most important, the school is to protect the health, safety, and well-being of students and staff. This concern must be balanced against the school's responsibility to protect property and see that the educational process continues.

Schools can be more efficient in carrying out these roles if they develop policies and procedures for addressing alcohol and drug use. The importance of developing clearly written administrative guidelines *can not be overemphasized.* Guidelines protect both the student and the school.

THE SCHOOL STAFF'S PART IN ALCOHOL AND DRUG SITUATIONS

Professional school staff operate under the concept of *in loco parentis.* They are, in effect, "parents" during the school day and have rights and responsibilities similar to those of parents. This allows school administrators and teachers broad flexibility when taking action to protect and educate students.

School staff, particularly teachers are in an excellent position to help students with alcohol and drug problems. They have the opportunity to observe student behavior on a day-to-day basis and can observe behaviors that may warrant intervention. Often, because they are unclear about how to proceed, teachers may choose to ignore symptomatic behavior. This again points out the importance of a set of formal procedures and guidelines for dealing with alcohol and drugs.

For more information, contact your regional Alcohol and Drug Defense consultant at the following locations:

Region 1, P.O. Box 1028
Williamston 27892
(919) 792-5166

Region 2, 612 College Street
Jacksonville 28540
(919) 455-8100

Region 3, 2431 Crabtree Blvd.
Raleigh 27604
(919) 733-2864

Region 4, P.O. Box 786
Carthage 28327
(919) 947-5871

Region 5, P.O. Box 21889
Greensboro 27420-1889
(919) 334-5764

Region 6, 2400 Hildebrand Street
Charlotte 28216
(704) 392-0378

Region 7, 303 E. Street
North Wilkesboro 28659
(919) 667-2191

Region 8, 514 E. Marshall St.
Waynesville 28786
(704) 452-0363

State Office: Alcohol and Drug Defense Program, North Carolina Department of Public Instruction, Education Annex II, Raleigh, NC 27603-1712 (919) 733-6615

CONDUCTING SEARCHES

Locker Searches

It should be made clear that searches are not a cure-all and in no way should they be used exclusively as a school's method of dealing with its alcohol and drug problem. Searches however can be a useful part of a school's comprehensive drug policy, and the concept of *in loco parentis* gives school personnel much more freedom to conduct searches than law enforcement has. When searches are to protect the health and welfare of students and the educational process, they may be conducted based on less evidence than is required by police.

Locker searches are, legally, the safest method of conducting searches. Lockers are school property and the school has an obligation to insure that they are used properly. Before conducting locker searches, a school should have a written locker policy which addresses when seaches may be conducted, who may conduct them, and what disciplinary actions will be taken. It should be stated clearly in the policy that the searches are conducted under the doctrine of *in loco parentis*. To avoid problems, the policy should be communicated to parents and students at the beginning of the school year. Schools should be particularly careful when involving law enforcement officials because of the more stringent requirements that bind them.

Individual Searches

Searching individual students requires more evidence than locker searches. Probable cause is a legal term used to describe the amount of evidence necessary before police can conduct a search and seizure. School personnel *are not bound by probable cause*. They need only have *reasonable suspicion, or reasonable cause* to initiate in-house searches. Operating under the doctrine of *in loco parentis* school officials have broad flexibility in searches.

However, personal searches should only be conducted if there is reasonable suspicion that a student is concealing something that breaks a law or school rule. The *suspicion should be specific to the student being searched.* Permission to search should be requested before commencing an involuntary search. All searches should be conducted in the presence of another staff member. Again, *the primary purpose for the search should be the protection of the health and safety* of students, faculty, school property and the educational process.

SUMMARY

By developing formal written policies and procedures to deal with alcohol and drug use, and by framing all actions within the framework of *in loco parentis,* local school personnel are protecting Fourth Amendment rights of students. They are also protecting themselves against the threat of civil rights suits. If you have questions about your current policies and procedures for dealing with student drug use please contact your Regional ADD consultant for assistance.

ADD Bulletin

Alcohol and Drug Defense Program

North Carolina Department of Public Instruction

LSD

Due to the continued availability of LSD to school aged children, the ADD Program is issuing a special bulletin on this day. The article that follows was written by the State Bureau of Investigation.

LSD is one of the most powerful of the hallucinogenic drugs. Hallucinogenic drugs, both natural and synthetic, are substances that distort the perception of objective reality. LSD is an abbreviation for Lysergic Acid Diethylamide. It is produced from Lysergic Acid, a substance derived from the ergot fungus which grows on rye or from lysergic acid amide, a chemical found in morning glory seeds. It was first synthesized in 1938 and for a period of years was used as a tool of research to study the mechanism of mental illness. During the 1960's, LSD was adopted by the drug culture and the illegal production of the drug was carried on in clandestine laboratories with no quality controls. It is usually sold in the form of tablets or impregnated paper ("blotter acid"). The average oral dose is 50 to 200 micrograms (a quantity no larger than the point of a pin), however the amount per dosage unit varies greatly due to the poor laboratory controls under which it is made.

In the 1970's the use of LSD declined in North Carolina. It is now on the increase in North Carolina and across the United States. This is an alarming fact because LSD is the most dangerous hallucinogenic drug sold on the streets. Physical reactions may include dilated pupils, lowered temperature, nausea, "goose bumps", profuse perspiration, increased blood sugar, and rapid heart beat. During the first hour after ingestion, the user may experience visual changes followed by extreme changes in mood. In the hallucinatory state, the user may suffer loss of depth and time perception accompanied by distortions with respect to size of objects, movements, color, spatial arrangement, sound, touch, and his own "body image". During this period, the user's ability to perceive objects through the senses, to make sensible judgements, and to see common dangers is lessened and distorted thus making the user more susceptible to personal injury and to injurying others accidentally.

For more information, contact your regional Alcohol and Drug Defense consultant at the following locations:

Region 1, P.O. Box 1028
Williamston 27892
(919) 792-5166

Region 2, 612 College Street
Jacksonville 28540
(919) 455-8100

Region 3, 2431 Crabtree Blvd.
Raleigh 27604
(919) 733-2864

Region 4, P.O. Box 786
Carthage 28327
(919) 947-5871

Region 5, P.O. Box 21889
Greensboro 27420-1889
(919) 334-5764

Region 6, 2400 Hildebrand Street
Charlotte 28216
(704) 392-0378

Region 7, 303 E. Street
North Wilkesboro 28659
(919) 667-2191

Region 8, 514 E. Marshall St.
Waynesville 28786
(704) 452-0363

State Office: Alcohol and Drug Defense Program, North Carolina Department of Public Instruction, Education Annex II, Raleigh, NC 27603-1712 (919) 733-4615

After the effects of the LSD have worn off (8-12 hrs), the user may suffer acute anxiety or depression for a variable period of time. Recurrence of hallucinations have been reported days, or months, after the last dose. Psychoses, both short and long-range, have followed the use of LSD for some.

The main type of LSD we are seeing in North Carolina is "blotter acid". This is found in small pieces of paper (.5 to 1 cm) that usually contain some type of design such as stars, moon, swamp scenes, or cartoon characters. In pill form, LSD is usually very small (about the size of a saccharine tablet or smaller) and brightly colored. It is usually referred to as acid blotter, microdots, or by the design on the paper, i.e.: moon and star acid, swamp acid, musical notes acid.

In addition to the extreme potential for physical and mental harm that users are being exposed to, they are also taking a chance with their freedom and future career aspirations. In North Carolina possession of any amount of LSD is a felony punishable by up to five years in prison. Conviction of a felony prohibits an individual from exercising his/her right to vote and from pursuing many careers.

C. J. Overton, III
N.C. State Bureau of Investigation

Although the ADD Program has not had any direct contacts concerning problems with student use of LSD, we are aware that use by school aged children is increasing and that parents, faculty and students need to be alerted to the dangers of this drug. Call us if you need special help with this problem!

Ad Bulletin

Alcohol and Drug Defense Program

North Carolina Department of Public Instruction

Marijuana

Marijuana use by school aged young people in North Carolina is continuing at very high rates. The use of any psychoactive drug by an adolescent is cause for concern. During the past few years, research has resulted in renewed emphasis to prevent the use of this drug. The following information provides you with factual information about "the weed."

CANNABIS SATIVA L, the hemp plant, has been known to man for nearly 5,000 years. Its fibers have been used to manufacture twine, rope, bags, clothing, and paper. The sterilized seeds are used in various seed mixtures, particularly for bird seed. The common name for cannabis sativa L is marijuana or marihuana.

The term marijuana is used in this country to refer to the cannabis plant or to any part of it that produces somatic or psychic changes in man. Marijuana is a tobacco-like substance produced by drying the leaves and flowering tops of the plant. Delta-9-tetrahydrocannabinol (THC) is the cannabinoid believed to be responsible for most of its characteristic psychoactive effects. Because of the low THC content in North Carolina marijuana, consumers have traditionally preferred South American, Mexican and Jamaican marijuana. This is no longer true! Selective North Carolina breeding and refined cultivation have lead to very high levels of THC in marijuana. A by-product of marijuana is hashish, which consists of the THC-rich resinous secretions of the cannabis plant that are collected, dried, and then compressed into a variety of forms. Hashish is usually brown colored and resembles a flat stone. The texture may be crumbly or hard depending on the strength of the resin and the binder used to produce the product. Hashish has significantly higher THC content than does marijuana. It is usually smoked in a pipe.

Marijuana is usually smoked in loosely rolled cigarettes (joints). A marijuana cigarette is often rolled in double thick commercially made "rolling papers" with the paper twisted or tucked in on both ends. Marijuana can also be smoked in regular or special water pipes.

The effects of smoking marijuana are felt within minutes, reach their peak in 10 to 30 minutes, and may linger for two or three hours. Low doses tend to induce restlessness and an increased sense of well-being followed by a state of relaxation and frequently a craving for sweets. High doses may result in image distortion, a loss of personal identity, and fantasies and hallucinations. Very high doses may result in a toxic psychosis. Psychotic reactions occur most frequently in individuals who are under stress, anxious, or depressed, and in normal users who inadvertently take more than their usual dose.

For more information, contact your regional Alcohol and Drug Defense consultant at the following locations:

Region 1, P.O. Box 1028
Williamston 27892
(919) 792-5166

Region 2, 612 College Street
Jacksonville 28540
(919) 455-8100

Region 3, 2431 Crabtree Blvd.
Raleigh 27604
(919) 733-2864

Region 4, P.O. Box 786
Carthage 28327
(919) 947-5871

Region 5, P.O. Box 21889
Greensboro 27420-1889
(919) 334-5764

Region 6, 2400 Hildebrand Street
Charlotte 28216
(704) 392-0378

Region 7, 303 E. Street
North Wilkesboro 28659
(919) 667-2191

Region 8, 514 E. Marshall St.
Waynesville 28786
(704) 452-0363

State Office: Alcohol and Drug Defense Program, North Carolina Department of Public Instruction, Education Annex II, Raleigh, NC 27603-1712 (919) 733-6615

There exist a great deal of controversy about the effects of chronic use of cannabis on brain functioning. There is evidence that chronic use can lead to lasting behavioral changes in some users. Apathy, lack of concern for the future, and loss of motivation have been described in some chronic users, and psychotic and paranoid symptoms in others. These symptoms usually gradually disappear when regular use is discontinued and recur when use is resumed. Many health care professionals are concerned about such reactions in young drug users. Regular use by young adolescents may produce adverse effects on psychological and physical development. Although research is inconclusive, chronic use also seems to cause respiratory problems similar to those caused by tobacco.

It is difficult to recognize a user of marijuana. In the early stages of the **drug's effect,** when the drug acts as a stimulant, the user may be very animated and appear almost hysterical. Loud and rapid talking with great bursts of laughter are common. In the later stages of the drug's effect, the user may seem sleepy or in a stupor. The use of marijuana may be detected by an odor which is similar to that of burnt rope. Marijuana use often occurs in a group situation. Because of the rapid burning of the cigarette, it is generally passed after one or two inhalations to another person. The smoke is deeply inhaled and held in the lungs as long as possible. The cigarette is often cupped in the palms of both hands when inhaling to save all the smoke possible.

In North Carolina, possession of in excess of one and a half ounce of marijuana is a felony punishable by up to five years imprisonment. Possession of in excess of one-half ounce is a misdemeanor punishable by imprisonment of not more than 30 days or a fine of not more that $100 or both.

Supervisor C.J. Overton, III
N.C. State Bureau of Investigation

Although the indicators of marijuana use are often difficult to detect, school officials should be sensitive to a combination of symptoms that include **red eyes, erratic or unusual behavior, and falling grades.** If you become concerned about a student, make a referral to the guidance office. Drug use doesn't just go away. We need to intervene. Your early identification and referral of a student could make the difference in a life. Call ADD if you need help!

Add Bulletin

Alcohol and Drug Defense Program

North Carolina Department of Public Instruction

Nicotine/Cigarettes

"Cigarette smoking is dangerous to your health"

This warning label on each cigarette pack states clearly that the results are in from tobacco research. The U.S. Surgeon General's Report of 1982 states smoking tobacco is probably the most physically damaging and addictive habit endangering the health of 54 million American smokers. One out of six smokers will die of cardiovascular diseases, chronic bronchitis and emphysema, or cancer of the lungs, larynx, mouth or esophogus. Nicotine (whether in the form of cigarettes, snuff or chewing tobacco) is a powerful drug, just as addictive as heroin but of far greater public health impact.

When a smoker inhales a cigarette, the nicotine stimulates the brain and central nervous system causing a feeling of relaxation. Physiologically, nicotine raises the blood pressure and increases heart rate. Nicotine also slows digestion, curbs appetite, lowers skin temperature and reduces blood circulation in the legs and arms.

Nicotine is just one of the chemicals in tobacco. Several thousand chemicals such as cadmium, benzene, ammonia, formaldehyde, hydrogen, and sulphide make up the smoke and "tar" in a cigarette. In addition, each cigarette contains a heavy dose of poisonous carbon monoxide. Carbon monoxide (CO), which makes up about four percent of the smoke of a cigarette, displaces a large amount of oxygen in red cells and forms carboxyhemoglobin (COHb). The average smoker has from 2.5 to 13.5 percent more COHb in the blood than non-smokers. While nicotine causes the heart to pump harder, COHb deprives it of the extra oxygen needed. Carbon monoxide also promotes cholesterol deposits in arteries, impairs vision and judgment and reduces attentiveness to sounds. Because it impairs vision and judgment, CO is dangerous to drivers, reduces athletic performance and is hazardous to flight crews.

The smoker is not the only one affected by cigarette smoke. Two-thirds of the smoke from cigarettes, pipes and cigars goes into the environment. Non-smokers are subjected to sidestream smoke which goes directly in the air. Sidestream smoke has higher concentrations of noxious compounds than mainstream smoke inhaled by the smoker.

There is twice as much tar and nicotine in sidestream smoke, three times as much 3-4 benzpyrene (a carcinogenic compound), five times as much carbon monoxide, and fifty times as much ammonia. Research is still being done on the effects of sidestream smoke, but conclusive evidence shows that young children inhale two to three times more of a pollutant per body weight than adults. Bronchitis and pneumonia appear to be more prevalent among children with a smoking parent. Asthma and allergies are triggered by smoke. Studies of non-smokers exposed to tobacco smoke for many years showed lung damage.

For more information, contact your regional Alcohol and Drug Defense consultant at the following locations:

Region 1, P.O. Box 1028
Williamston 27892
(919) 792-5166

Region 2, 612 College Street
Jacksonville 28540
(919) 455-8100

Region 3, 2431 Crabtree Blvd.
Raleigh 27604
(919) 733-2864

Region 4, P.O. Box 786
Carthage 28327
(919) 947-5871

Region 5, P.O. Box 21889
Greensboro 27420-1889
(919) 334-5764

Region 6, 2400 Hildebrand Street
Charlotte 28216
(704) 392-0378

Region 7, 303 E. Street
North Wilkesboro 28659
(919) 667-2191

Region 8, 514 E. Marshall St.
Waynesville 28786
(704) 452-0363

State Office: Alcohol and Drug Defense Program, North Carolina Department of Public Instruction, Education Annex II, Raleigh, NC 27603-1712 (919) 733-6615

More teenagers are using smokeless tobacco. Many are unaware of the health hazards. Leukoplakia, leather white patches inside the mouth, are the result of direct contact with tobacco juice. Approximately five percent of diagnosed cases develop into oral cancer. The sense of taste and smell are affected. Problems such as receding gums, tooth decay, tooth discoloration and bad breath are related to oral tobacco use.

Young people between 12-18 years of age are most likely to begin smoking. Since 1979 there has been a decline in the percentage of teen smokers from 25 percent to 12 percent. However, the number of female smokers has increased to equal the number of male smokers.

Women who use oral contraceptives and smoke have a considerably higher risk of strokes, heart attacks and blood clots in their legs. Maternal smoking also increases the risk of spontaneous abortion, of fetal death and neonatal death in otherwise normal infants. Babies born to smoking mothers are usually smaller at birth and show deficiencies in physical, intellectual and emotional growth.

Once a young person begins to smoke, future choices are made less freely because smoking is addictive. Research by the National Institute on Drug Abuse shows that the child who smokes:

- is academically less successful than peers;
- has one or both parents who smoke as well as an older sibling and/or friend who smoke;
- perceives smoking as not harmful.

Successful tobacco prevention programs for youth begin in elementary school; have good information about tobacco use; and involve parents and other adults "modeling" non-using behaviors.

The ADD Program can assist in developing tobacco programs in your school.

Add Bulletin

Alcohol and Drug Defense Program

North Carolina Department of Public Instruction

Steroids

Anabolic steroids are various synthetic derivatives of testosterone of the male hormone. The drug has been used to stimulate a build up of the body by synthesizing protein for muscle growth and tissue repair. It is used primarily for those recovering from major surgery or those with chronic debilitating diseases. Today there are numerous anabolic agents. Three of the most commonly used are Anadrol, Dela-Durabolin and Anavar. There is also a substance called growth hormone, which is extracted from the pituitary glands of human cadavers and is now also available in synthetic form.

Steroid use appears to be rapidly increasing among high school athletes. Steroid use is also growing among young boys as a way of dealing with self-doubt about their masculinity.

There are psychological side effects from steroid use. Steroids are sometimes addictive, producing a sense of supersized manhood that can only be monitored through continued or increased use.

None of the anabolic steroids are to be dispensed without a physician's prescription, but large quantities are available on the black market. In some instances, coaches dispense steroids to players. Players sell them to other players. Some doctors and pharmacists freely prescribe or dispense them to athletes. Owners of some bodybuilding and weightlifting gyms and hangers-on at such places may peddle them.

Athletes in almost every sport use illegal anabolic steroids. Powerlifting and bodybuilding sports are best known for steroid use, but they are also used in track and field, swimming, boxing, wrestling and cycling. Some National Football League players estimate that about ninety percent of their peers use steroids.

Anabolic steroids upset the normal hormonal balance, causing the body to produce excess testosterone (male hormones).

The body compensates by:

1. Reducing the amount of testosterone and perhaps other hormones during the period of steroid use.
2. Regulating hormonal levels by overworking the liver to remove the excess testosterone from the body. Other complications include, stunting natural growth, possible cancer, increase in blood pressure, testicular atrophy, prostrate blockage, gastrointestinal bleeding, nausea, headaches and low sperm count.

For more information, contact your regional Alcohol and Drug Defense consultant at the following locations:

Region 1, P.O. Box 1028
Williamston 27892
(919) 792-5166

Region 2, 612 College Street
Jacksonville 28540
(919) 455-8100

Region 3, 2431 Crabtree Blvd.
Raleigh 27604
(919) 733-2864

Region 4, P.O. Box 786
Carthage 28327
(919) 947-5871

Region 5, P.O. Box 21889
Greensboro 27420-1889
(919) 334-5764

Region 6, 2400 Hildebrand Street
Charlotte 28216
(704) 392-0378

Region 7, 303 E. Street
North Wilkesboro 28659
(919) 667-2191

Region 8, 514 E. Marshall St.
Waynesville 28786
(704) 452-0363

State Office: Alcohol and Drug Defense Program, North Carolina Department of Public Instruction, Education Annex II, Raleigh, NC 27603-1712 (919) 733-6615

Females are susceptible to increased male hormone level and change in body characteristics from use of the drug: body hair, lowered voice, menstrual irregularities and abnormalities in genital areas.

The competition is so fierce in all levels of sports that athletes feel they must take great risks to get the edge. Young teenage users who think that anabolic steroids will enhance their performance are unaware of the health risks that anabolic steroid use imposes. For some, the only thing that matters is, "Will I get caught?" Those who get caught will be lucky, especially those caught early enough to prevent irreparable damage.